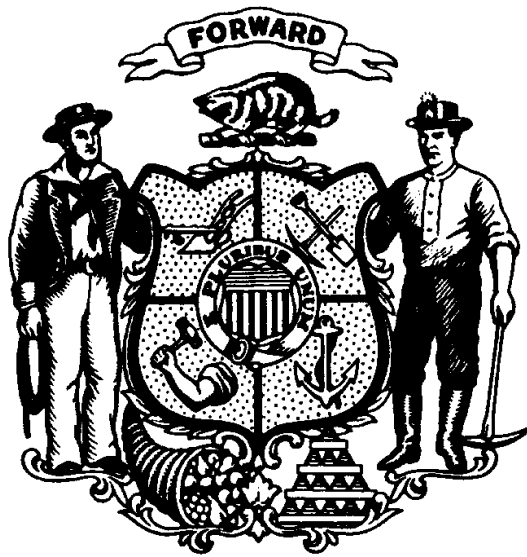


WISCONSIN ADMINISTRATIVE REGISTER

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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (2)

Agriculture, Trade & Consumer Protection

1. Rules adopted amending ss. **ATCP 81.50 (2), 81.51 (2), and 81.52 (2)**, relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as

Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998

Effective Date: August 8, 1998

Expiration Date: January 4, 1999

Hearing Date: September 14, 1998

Extension Through: May 3, 1999

2. Rules were adopted creating ss. **ATCP 10.68 and 11.58**, relating to fish farms and imports of live fish.

Finding of Emergency

(1) This emergency rule implements s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Under s. 95.60, Stats., a person who operates a fish farm must register annually with the Wisconsin department of agriculture, trade and consumer protection (DATCP). A person who imports live fish or fish eggs into Wisconsin must meet fish health requirements and obtain an import permit from DATCP. DATCP must establish registration and import permit standards by rule.

(3) On December 9, 1998, the Board of Agriculture, Trade and Consumer Protection (DATCP Board) approved final draft "permanent" rules to implement s. 95.60, Stats. Among other things, the rules establish fish farm registration standards and fish import standards. Before DATCP may adopt these final draft "permanent" rules, it must submit them for legislative committee review under s. 227.19, Stats. DATCP must then adopt and file the rules under s. 227.20, Stats., and publish them under s. 227.21, Stats. As a result, the final draft "permanent" rules will not take effect for several months.

(4) Current fish farm registration certificates will expire on December 31, 1998, before the final draft "permanent" rules take effect. The department must adopt a temporary emergency rule so it can process registration renewals pending the effective date of the final draft "permanent" rules. This emergency rule adopts, on a temporary basis, registration provisions contained in the department's proposed final draft "permanent" rules.

(5) This emergency rule also adopts, on a temporary basis, rules to prevent imports of diseased live fish and fish eggs that threaten the health of fish in Wisconsin fish farms and the Wisconsin natural environment. These temporary import requirements are based on requirements previously administered by the Wisconsin department of natural resources (DNR). The final draft "permanent" rules, when adopted, will expand upon these interim requirements.

(6) This emergency rule is needed to protect the public peace, health safety and welfare. Without this rule, DATCP would not be able to process fish farm registrations for 1999, or issue permits for live fish imports. Without the protections afforded by this emergency rule, Wisconsin fish farms and wild fisheries would also be exposed to an unnecessary risk of disease.

Publication Date: December 28, 1998
Effective Date: December 28, 1998
Expiration Date: May 27, 1999
Hearing Date: February 3, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

Publication Date: December 11, 1998
Effective Date: December 11, 1998
Expiration Date: May 10, 1999
Hearing Date: March 3, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Uniform Dwelling, Chs. Comm 20-25)

Rules adopted revising **Chs. Comm 20, 21, 22 and 23**, relating to energy efficiency in one- and 2-family dwellings.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare. The facts constituting the emergency are as follows:

The rule change that was to go into effect on February 1, 1999 consists of a complete rewrite of chapter Comm 22, which relates to energy efficiency in one- and 2-family dwellings, as well as miscellaneous changes to chapters Comm 20, 21 and 23. The department planned for a lead time of approximately 2 months between the time the code was made available and the code effective date. Because of difficulties in preparing and printing the code, the anticipated lead time could not be achieved. Several constituent groups, including builders, inspectors, and the Uniform Dwelling Code Council have asked for extra time to become familiar with the changes, once the complete code is made available. If this is not done, a great deal of confusion and economic hardship could result for builders, as well as homeowners. Enforcement of the new requirements could vary greatly from one municipality to the next.

This emergency rule delays the effective date of the proposed changes to chs. Comm 20, 21, 22 and 23 from February 1, 1999 to May 1, 1999.

Publication Date: January 23, 1999
Effective Date: February 1, 1999
Expiration Date: July 1, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Commerce & Natural Resources

(Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

1. Rules were adopted creating **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Finding of Emergency

The Departments of Commerce and Natural Resources find that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department of Commerce protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directs the Department and the Department of Natural

Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. The rule included with this order is in response to that directive.

Publication Dates: January 1 & February 5, 1999

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

Hearing Dates: March 11 and 25, 1999

2. Rules adopted revising **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Finding of Emergency

The Departments of Commerce and Natural Resources find that an emergency exists and that adoption of a rule included in this order is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under sections 101.143 and 101.144, Wisconsin Statutes, the Department of Commerce protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directed the Department and the Department of Natural Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. An emergency rule in response to that directive was adopted by the Department and became effective on January 1, 1999. Since that date, further improvements for jointly administering the PECFA fund have been developed, which are consistent with the JCRAR directive and which are expected to significantly mitigate the backlog of claims to this oversubscribed fund.

Publication Dates: February 23 & March 1, 1999

Effective Date: February 23, 1999

Expiration Date: May 31, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Commerce

(Financial Resources for Communities, Chs. Comm 105 to 128)

1. Rules adopted revising **ch. Comm 113**, relating to the annual allocation of volume cap on tax-exempt private activity bonds.

Finding of Emergency & Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Several areas in the State of Wisconsin have recently experienced severe economic distress due to large plant closings which have put hundreds of Wisconsin residents out of work. As a result of two large paper mills being shut down a year ago, 1997 Wisconsin Act 237 created s. 560.147, Stats., authorizing the Rapid Response Fund

within the Wisconsin Development Fund. The fund is part of the Rapid Response Initiative, which assists areas affected by these and future closings. Commerce is now proposing as part of this initiative a Rapid Response Set Aside within the volume cap allocation process which will enable businesses in these distressed areas to obtain the financing they need to make the necessary capital investments to create and retain jobs. Several projects are pending in that need this change in order to move forward with their plans. Allocation of volume cap is in highest demand in the spring and summer due to the construction cycle. The Rapid Response set-aside must be in place as soon as possible in order for projects to receive allocation and begin construction as soon as possible. Jobs cannot be created or retained until projects go forward.

Publication Date: February 17, 1999

Effective Date: February 17, 1999

Expiration Date: July 17, 1999

Hearing Date: April 12, 1999

2. Rules adopted creating **ch. Comm 112**, relating to the Wisconsin Development Zone Program.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Pursuant to ss. 560.70 to 560.797, Stats., the Department of Commerce is responsible for administering Wisconsin Development Zone Program. These rules are being adopted to incorporate in the administrative code the recent amendments contained in 1997 Wis. Act 27 that entirely changed the eligibility and the criteria for certified development zone businesses and the process for the verification and the claiming of tax credits. Section 560.785, Stats., directs the Department of Commerce to develop rules and exceptions to those rules concerning the eligibility for tax benefits. After a review and evaluation of all the certified businesses and their projects a number of exceptions have been identified in order to meet the needs of different areas of the state and to fulfill our commitments to businesses that were made prior to this legislation. In order to process claims for tax years beginning on or after January, 1, 1998, these rules must be made available immediately.

Publication Date: February 25, 1999

Effective Date: February 25, 1999

Expiration Date: July 25, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

1. Rules were adopted amending **s. DOC 328.21**, relating to absconders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule

amendment allows a search of an offender's residence for contraband or an offender.

Publication Date: December 3, 1998
Effective Date: December 3, 1998
Expiration Date: May 2, 1999
Hearing Dates: March 1 and 3, 1999

2. Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more than six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

1. Adopts the statutory definitions of adult, delinquent, and juvenile.
2. Defines the term secure custody status.
3. Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
4. Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
5. Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.
6. Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.
7. Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.
8. Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.
9. Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.
10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

Publication Date: December 10, 1998
Effective Date: December 10, 1998
Expiration Date: May 9, 1999
Hearing Date: February 15, 1999

3. Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

Publication Date: January 1, 1999
Effective Date: January 1, 1999
Expiration Date: May 31, 1999
Hearing Dates: March 1, 2 and 3, 1999

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning

Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

Publication Date: January 20, 1999
Effective Date: January 20, 1999
Expiration Date: June 19, 1999
Hearing Dates: March 16 & 19, 1999

EMERGENCY RULES NOW IN EFFECT

Financial Institutions (Division of Banking)

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI–Bkg 41**, relating to mortgage banking.

Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registrations and renewals of registrations.

Publication Date: December 4, 1998
Effective Date: December 4, 1998
Expiration Date: May 3, 1999
Hearing Date: March 3, 1999

EMERGENCY RULES NOW IN EFFECT

Financial Institutions (Division of Securities)

Rules adopted creating **s. DFI–Sec 2.01(1)(c)6 and (d)6.**, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

These emergency rules are necessitated by a new accounting guideline relating to disclosures about Year 2000* issues applicable to the preparation of financial statements for governmental issuers of securities as required by Governmental Accounting Standards Board Technical Bulletin 98–1, *Disclosures about Year 2000 Issues* (“GASB TB 98–1”, or “Guideline”). The existence of this issue and the need for emergency rule treatment to assist governmental issuers was brought to the attention of the Division by representatives of Wisconsin public accounting groups and Wisconsin bond attorneys who recently learned about a Report by the American Institute of Certified Public Accountants regarding GASB TB 98–1.

As a result of that Report (and as particularized below) many Wisconsin governmental issuers would have the audit opinions for their financial statements for years ending after October, 1998, qualified with respect to disclosures about Year 2000 issues. Thus beginning in approximately March and April of 1999 and continuing through the accounting period ending 12/31/99, that new accounting Guideline will adversely impact the ability of Wisconsin and other state and local governmental securities issuers to continue to use on an “automatic”/self-executing basis, the existing securities registration exemption in s. 551.22(1)(a) of the Wisconsin Securities Law to offer and sell their debt securities to public investors in Wisconsin.

Over the years and to date, Wisconsin and other state and local governmental securities issuers having “full-GAAP” financial statements (e.g. prepared in accordance with generally accepted accounting principles) have been able to sell their debt securities to Wisconsin public investors in reliance on automatic use of the registration exemption in s. 551.22(1)(a), Wis. Stats., without the need for any exemption or other filing with the Division.

GASB TB 98–1 requires footnote disclosure of Year 2000 information regarding a governmental issuer’s preparedness in terms of making its systems and equipment Year 2000 compliant. GASB TB 98–1 applies to financial statements dated October 31, 1998, and terminates for financial statements issued for purposes of the accounting period ending December 31, 1999, unless systems and equipment are not Year 2000 compliant as of the balance sheet date. In response to GASB TB 98–1, members of the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) issued a Report under the title “AICPA Illustrative Reporting Guidance on Year 2000 Disclosures Made Under GASB TB 98–1, Issued October 22, 1998.” That Report raised the concern that in light of the unprecedented nature of the Year 2000 issue, the required disclosures will be neither ascertainable by management nor verifiable by auditors. As a result, the AICPA strongly recommended that auditors issue qualified opinions (scope limitations) with respect to such Year 2000 issue disclosures.

Consequently, all Wisconsin and other governmental securities issuers whose financial statements would contain such qualified opinions, would not meet (in the absence of the emergency rules) the “full-GAAP” financial statement requirement for automatic use of the registration exemption in 551.22(1)(a), Wis. Stats. Thus, such

issuers would either have to go through a regulatory filing and review procedure with the Division prior to each offering, or would have to restrict the initial offering to securities law provisions that would preclude underwriters from reoffering those securities to investors in the primary and secondary markets.

In the absence of the emergency rules, governmental securities issuers would be adversely affected by the costs of making securities filings with their attendant delays. Also, even though Year 2000 issues equivalently affect private corporate issuers of securities, because there is no counterpart to GASB TB 98-1 within the standards promulgated by the Financial Accounting Standards Board applicable to private corporate securities issuers, the additional costs and filing delays would be singularly borne by governmental securities issuers (if the emergency rules were not adopted).

Finally, having a filing requirement under the Wisconsin Securities Law be triggered for Wisconsin and other state and local governmental securities offerings solely because of an auditor's qualification in an audit report on the Year 2000 issue, would result in added regulatory filing and review processes and procedures under the Wisconsin Securities Law that would not provide any "value added" investor protection benefits.

Therefore, in similar fashion to emergency rule-making action taken by the Division in 1994 and 1996 regarding specific accounting issues which occurred at those times, and for the purpose of alleviating the disruption that would occur in the borrowing/bonding plans of Wisconsin and other state and local governmental issuers that regularly claim exemption status under sec. 551.22(1)(a), Wis. Stats., for the offer and sale of their debt securities in Wisconsin, the Division, in consultation with representatives of Wisconsin accounting groups and Wisconsin bond attorneys, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement requirement (when the governmental issuer's financial statements are full-GAAP) where the auditor's opinion is qualified in accordance with GASB TB 98-1 with respect to disclosures concerning Year 2000 issues. As a result of such emergency rules, those Wisconsin and other state and local governmental securities issuers affected by GASB TB 98-1 will be able to continue to rely on the "automatic" registration exemption under 551.22(1)(a), Wis. Stats., for their securities offerings.

[Because this issue which has been triggered by GASB TB 98-1 has a limited "shelf life" such that no permanent rules relating to it will be needed after December 31, 2000, when action is taken by the Division to promulgate identical permanent rules to become effective upon expiration of the emergency rules, the permanent rules will provide for a December 31, 2000 "sunset" date, after which the permanent rules on the issue will no longer be effective.]

*The Year 2000 problem is the result of shortcomings in electronic data-processing systems and equipment that may adversely affect operations in the year 2000 and beyond. The problem stems from the use within electronic systems and equipment of two-digit storage for calendar years. Affected and uncorrected systems and equipment may be unable to distinguish the year 2000 from the year 1900; as a result, such systems may process inaccurately or stop processing altogether.

Publication Date: February 25, 1999

Effective Date: March 1, 1999

Expiration Date: July 29, 1999

EMERGENCY RULES NOW IN EFFECT (4)

Health & Family Services

(Management, Technology & Finance,

Chs. HFS 1--)

(Health, Chs. HFS 110--)

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver

misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999
Extension Through: May 4, 1999

2. Rules adopted creating **ch. HFS 12**, relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employees or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding

credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employees and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999
Extension Through: May 4, 1999

3. Rules adopted amending **chs. HFS 12**, relating to background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing

care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

Publication Date: December 12, 1998

Effective Date: December 12, 1998

Expiration Date: May 11, 1999

4. Rules adopted revising **chs. HFS 12 and 13**, created as an emergency rules relating to caregivers background checks and reporting of caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 included an appendix which consisted of a list of crimes. That Crimes List was modified by emergency order published on December 12, 1998. This order, which is being published following the Department's public hearings on the emergency rules and the proposed replacement permanent rules, makes further significant changes in the Crimes List and other parts of the ch. HFS 12 emergency rules.

The Crimes List appended to ch. HFS 12 is modified by this order to move several crimes from "permanent bar" status to "bar with rehabilitation" status, to place time limits on having to demonstrate rehabilitation for certain other crimes, and to remove some crimes altogether from the Crimes List. Also in ch. HFS 12, definitions have been added for "access" and "Department-designated tribe" and have been significantly revised for "caregiver" and "under the entity's control." Indian tribes designated by the Department are permitted to conduct rehabilitation reviews for bar with rehabilitation crimes.

This order also makes changes in ch. HFS 13, emergency rules for reporting caregiver misconduct and for maintenance of a caregiver misconduct registry. Those emergency rules were also published on October 1, 1998. Changes made in ch. HFS 13 by this order include addition of definitions for "access" and "course of conduct" and significantly revised definitions for "abuse," "caretaker," and "under the entity's control," and permission is given for the subject of a report to have a representative present when the subject has any contact with Department investigators.

The Department is modifying the chs. HFS 12 and 13 emergency rules by emergency order at this time because of their critical importance for proper implementation of the statutory caregiver background check and caregiver misconduct reporting requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The rule changes, including revision of the Crimes List, have been incorporated in the proposed permanent rules that will replace the emergency rules, but the replacement permanent rules will not take effect until June 1, 1999 at the earliest.

Publication Date: February 27, 1999

Effective Date: February 27, 1999

Expiration Date: May 11, 1999

EMERGENCY RULES NOW IN EFFECT

Health and Family Services

(Community Services, Chs. 30---)

Rule was adopted amending **s. HFS 94.24 (2)(e)**, relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have

consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date:	August 15, 1998
Effective Date:	August 15, 1998
Expiration Date:	January 11, 1999
Hearing Date:	December 17, 1998
Extension Through:	April 30, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Health and Family Services (Health, Chs. HSS/HFS 110—)

1. Rules adopted amending ss. **HFS 119.07 (6) (b) and 119.15**, relating to the Health Insurance Risk-Sharing Plan.

Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set Out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

Publication Date: December 31, 1998

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

Hearing Date: March 11, 1999

2. Rules adopted creating **ch. HFS 114**, relating to neonatal intensive care unit training grants.

Exemption From Finding of Emergency

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

Analysis Prepared by the Department of Health and Family Services

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

Publication Date: January 21, 1999

Effective Date: January 21, 1999

Expiration Date: June 20, 1999

Hearing Date: April 7, 1999

3. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like

walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of

the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called “interim certification” for individuals waiting to take the certification exam.
- Provides for a maximum 3–year certification period from the completion date of the most recent training course instead of a one–year or 2–year period from the date certification is issued.
- Revises how worker–safety training is received by requiring that worker–safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.
- Adds work practice standards for lead–based paint activities.

Accreditation

- Adds a mandatory hands–on skills assessment for hands–on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker–safety training, followed by a 16–hour worker course, with an additional 16–hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no–expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA’s requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker–homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the

Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: August 29, 1998
Effective Date: August 29, 1998
Expiration Date: January 25, 1999
Hearing Dates: November 30, December 1, 7 & 9, 1998
Extension Through: May 24, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Insurance

1. Rule adopted amending s. **Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, (“XXX”), from January 1, 1999 to July 1, 1999.

Finding of Emergency

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created Ins 2.80, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners (“NAIC”) valuation of life insurance policies model regulation, or “XXX”. This new rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

Publication Date: December 23, 1998
Effective Date: January 1, 1999
Expiration Date: May 31, 1999
Hearing Date: March 12, 1999

2. Rules adopted amending s. **Ins 3.39 (34)(b)1. and 2., 3.b., and 6.**, relating to guarantee issue eligibility for Medicare Supplement insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance commissioners) model Medicare Supplement regulations. In order to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

Publication Date: January 28, 1999
Effective Date: February 1, 1999
Expiration Date: July 1, 1999
Hearing Date: March 3, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Natural Resources

(Fish, Game, etc., Chs. NR 1—)

1. A rule was adopted revising **s. NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

Publication Date: December 15, 1997
Effective Date: April 1, 1998
Expiration Date: April 1, 1999
Hearing Date: January 12, 1998

2. Rules adopted creating **s. NR 20.33 (5)**, relating to special closure of the sturgeon spearing season if harvest reaches or exceeds 80% of the total allowable harvest.

Finding of Emergency

The department of natural resources finds that an emergency exists and rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter water clarity in Lake Winnebago has been improving steadily over the last decade at a rate faster than anticipated, which has substantially increased the potential for overharvest of sturgeon by spearers. Even with the new harvest restrictions passed in 1996, exceptionally clear water during the 1998 spearing season resulted in a total harvest of 2,051 fish, which was in excess of our total allowable harvest goals. An emergency order is needed to prevent overharvest of sturgeon during the 1999 season while permanent rules are being developed for implementation in the year 2000.

Publication Date: February 5, 1999
Effective Date: February 5, 1999
Expiration Date: July 5, 1999
Hearing Date: March 16, 1999

EMERGENCY RULES NOW IN EFFECT

Public Instruction

Rule adopted revising **s. PI 3.03 (6) (b) 3.**, relating to alternate teaching permits.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Dates: January 4, 5, 6 & 7, 1999
Extension Through: May 29, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. Rules adopted creating **ch. PSC 187**, relating to Sewer Main Extension: Cost Recovery.

Exemption From Finding of Emergency

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Dates: January 13 & 14, 1999

2. Rules adopted revising **ch. PSC 4**, relating to small generating plants.

Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin ratepayers by ensuring a reliable energy supply in 2000 and beyond, the Commission's review process of proposed new generating plants that are less than 100 MW in size must be amended. A revision is needed so the review process for such projects can be completed

in time to allow construction of necessary projects, if approved, by June 1, 2000. Permanent rules cannot be adopted in time to affect the Commission's review period. An emergency rule is necessary to change the Commission's review process immediately.

Publication Date: January 19, 1999
Effective Date: January 19, 1999
Expiration Date: June 18, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Regulation & Licensing

1. Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

Exemption From Finding of Emergency

The Department of Regulation and Licensing finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to develop administrative rules which must be in effect on the effective date of the new regulation.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: December 17, 1998
Extension Through: May 29, 1999

2. Rules adopted creating **chs. RL 140 to 142**, relating to the registration of music, art and dance therapists.

Finding of Emergency

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration of it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

- (1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.

(2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.

(3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

Publication Date: November 29, 1998
Effective Date: December 1, 1998
Expiration Date: April 30, 1999
Hearing Date: January 12, 1999

EMERGENCY RULES NOW IN EFFECT

Revenue

A rule was adopted creating **s. Tax 11.20**, relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

Exemption From Finding of Emergency

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26, (2) (b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54 (26m), Stats.

Analysis by the Department of Revenue

Statutory authority: ss. 227.11 (2) (a) & 227.26 (2) (b)

Statute interpreted: s. 77.54 (26m)

Section Tax 11.20 is created to address the sales and use tax exemptions for waste reduction and recycling activities.

Publication Date: March 27, 1999
Effective Date: March 27, 1999
Expiration Date: August 24, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering **ss. HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review

requirements in relation to certified day care programs as they become effective.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Extension Through: May 4, 1999

2. Rules adopted renumbering **chs. HSS 80 to 82** as **chs. DWD 40 to 42**, and creating **ch. DWD 43**, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: October 13, 20 & 27, 1998
Extension Through: March 29, 1999

EMERGENCY RULES NOW IN EFFECT

Workforce Development (Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted amending **s. DWD 290.155**, relating to the

annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between November 1997 and December 1998 requires that the threshold limits for prevailing wage rate determinations be raised from \$32,000 to \$33,000 for single-trade projects and from \$160,000 to \$164,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/99, a single-trade project costing more than \$32,000 but less than \$33,000, or a multi-trade project costing more than \$160,000 but less than \$164,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added complication of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this additional administrative burden on local governments and state agencies.

Publication Date: January 4, 1999
Effective Date: January 4, 1999
Expiration Date: June 3, 1999
Hearing Date: February 11, 1999

STATEMENTS OF SCOPE OF PROPOSED RULES

Elections Board

Subject:

S. EIBd 6.05 – Relating to defining “electronic filing” and setting the parameters for those that have to file electronically and the date as of which electronic filing will begin.

Description of policy issues:

Description of objective(s):

To amend the Elections Board’s existing rule; to eliminate provisions that provide for elective electronic filing of campaign finance reports and to provide for mandatory electronic filing beginning July 1, 1999.

Description of policies – relevant existing policies, proposed new policies and policy alternatives considered:

Under the existing rule, elective electronic filing was to have begun January 1, 1999. Because the software was not available to accomplish that objective, that provision of the rule is to be eliminated.

Statutory authority:

Sections 5.05 (1) (f) and 227.11 (2) (a), Stats.

Estimate of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

6 hours of staff time

Employee Trust Funds

Subject:

S. ETF 40.10 – Relating to continuation coverage for certain employees and retirees.

Description of policy issues:

Objectives of the rule:

The rule provides certain additional health insurance eligibility standards pursuant to s. 40.51 (7), Stats., for participating employers and employees under the Wisconsin Public Employer Group Health Insurance program. The rule was last modified in 1987.

Policy analysis:

Currently under state and federal law, certain employees who lose eligibility for group health insurance coverage may elect to continue that coverage for up to 36 months. However, if an employee is enrolled for coverage and it is later determined that the employer or the Department erred and the employee was not eligible, an offer of continuation coverage is not required under the law. This proposed rule provides for the offer of such continuation coverage. Fraud or misrepresentation will not constitute an employer error. In general, this type of situation is rare since procedures are in place to prevent such errors. However, once they occur it can constitute a significant hardship on employees that relied on the Department and the employer in establishing eligibility for health insurance coverage. The rule will not require that the employer cover the cost of the insurance.

Policy alternatives to the proposed rule:

1. Deny continuation coverage to employees even if erroneously enrolled before the eligibility error was discovered.
2. Seek statutory changes to provide remedies in case of employer or DETF error. See s. 40.70 (7m), Stats., as an example of an employer error provision in the life insurance program.

Statutory authority for rule-making:

SS. 40.03 (2) (ig) and 40.51 (7), Stats.

Staff time required:

The Department estimates that state employees will spend 20 hours to develop this rule.

Employee Trust Funds

Subject:

S. ETF 41.02 (5) – Relating to long-term care insurance and inflation protection.

Description of policy issues:

Objectives of the rule:

The rules provide standards promulgated by the Group Insurance Board (Board) for optional long-term care policies under s. 40.55, Stats., that may be offered to state employees and annuitants. These standards are in addition to the minimum standards established by the Office of the Commissioner of Insurance (OCI) for long-term care policies sold in Wisconsin. The rule was last modified in 1998.

Policy analysis:

Under the current s. ETF 41.02 (5) insurers must provide to policy holders one of four options for inflation protection above that required by OCI. The proposed rule would expand the present four options and allow the Board also to accept proposals from insurers that vary from stated standards when provisions materially meet the coverage objectives of one of the four existing standards. For example, under the existing interpretation, a provision of the rule that provides for a policy holder to purchase additional inflation protection annually may be met by an insurer offering an enrollment every other year if the amount of coverage purchased would be essentially similar to that resulting from an annual enrollment.

Policy alternatives to the proposed rule:

Continue the current interpretation of the rule which may result in fewer optional Long-Term Care policies being made available to state employees.

Statutory authority for rule-making:

Sections 40.03 (2) (ig) and (t) and 40.08, Stats.

Staff time required:

The Department estimates that state employees will spend 20 hours to develop this rule.

Health and Family Services (Health, Chs. HFS/HSS 110—)

Subject:

Chs. HFS 110, 111 and 112 – Relating to licensing of ambulance service providers and emergency medical technicians (EMT’s) –basic, –intermediate and –paramedic.

Description of policy issues:

Description of objective(s):

To integrate the current EMT–basic defibrillation and advanced airways sections of ch. HFS 110 into the EMT–basic licensing and training sections, thereby eliminating duplication, reducing the amount of rule language and making ch. HFS 110 easier to use; to expand the current scope of EMT practice consistent with changes in the national standard curricula for training EMT’s–basic, –intermediate and –paramedic, and on recommendation of state EMS advisory bodies; to update EMT medical practices based on new medical findings; and to otherwise update and clarify rule provisions based on new developments in the EMS field and experience since 1996 with implementation of the current rules.

Description of policies – relevant existing policies, proposed new policies and policy alternatives considered:

The Department licenses ambulance service providers under s. 146.50, Stats., and ch. HFS 110 administrative rules, licenses

emergency medical technicians (EMT's) at the basic, intermediate and paramedic levels under s. 146.50, Stats., and chs. HFS 110, 111 and 112 administrative rules, and administers the state emergency medical services (EMS) program under ss. 146.53 and 146.55, Stats. From time to time the Department, in consultation with the EMS Board created under s. 15.195 (8), Stats., and the EMS Physicians Advisory Committee, must update its rules. The rules were updated most recently in 1995-96. They need to be updated again to be kept current with changes in recommended medical practices and recent medical findings and with changes made nationally in the curricula for training EMT's which affects the scope of EMT practice. Also, it is time to make ch. HFS 110 easier to use by integrating what are now largely self-contained sections on the certification of EMT's--basic to perform defibrillation and the certification of EMT's--basic to use advanced airways into the other parts of ch. HFS 110 relating to EMT's--basic. Training in both areas is now part of the standard training for EMT's--basic. Those sections were added to ch. HFS 110 in, respectively, 1985 and 1994.

Statutory authority:

SS. 146.50 (4) (c), (5) (b) and (d), (6) (b) 2. and (c) (intro.) and (13) and 250.04 (7), Stats.

Estimates of staff time and other resources needed to develop the rules:

Initial preparation of the rules will take about 60 hours. Discussion of the rules with advisory bodies and modification of the rules based on that input will take an additional 6-12 hours.

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Subject:

NR Code -- Relating to set or bank pole identification.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The DNR is proposing to make the markings of inland set and/or bank poles similar to the requirements for inland setlines. Set and bank pole fishers in the Lake Winnebago, Southwest and Western portions of the state will be affected.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

This proposal will still allow conventional set and bank pole fishing gear but would require each set or bank pole to be marked with a marker staff banded horizontally with alternating black and white markings for Law Enforcement purposes. Currently these set and bank poles are not required to be marked, making identification and location determination almost impossible.

Statutory authority:

SS. 29.011 (1) and 29.014 (1), Stats.

Anticipated time commitment:

The anticipated time commitment is 13 hours. Three public hearings are proposed to be held after June 11, 1999. One hearing will be held in the Lake Winnebago-Upriver Lakes Region at Shiocton or New London. One hearing will be held in southwestern Wisconsin at Boscobel. One hearing will be held in western Wisconsin at LaCrosse.

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Subject:

Ch. NR 46 -- Relating to the annual adjustment of the timber stumpage values and consideration of zone changes in s. NR 46.30, and amending s. NR 46.15 (9) to clarify the rule in regard to land converted to MFL (Managed Forest Law) from the FCL (Forest Crop Law).

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The stumpage rate changes are an annual process and not a policy issue.

A zone change is being considered to more accurately reflect actual prices being received by the landowners and not a policy issue.

The new MFL building definition covers all new entries and additions. There are approximately 180 applications for conversion from the FCL to the MFL which came in prior to Jan. 1, 1998 (before the building definition was proposed for a change). These landowners and the towns are potentially affected.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

Some of the last FCL/MFL conversion petitions have not been processed yet and the landowners had not known of the change made in 1998. In an attempt to be consistent within the forest tax program, all lands converted through the conversion process will be grandfathered under the old rule process. This recommendation is made for consistency since the existing FCL landowners are not able to withdraw lands for a building site in most cases.

Statutory authority:

SS. 77.06 (2), 77.91 (1) and 227.11 (2) (a), Stats.

Anticipated time commitment:

The anticipated time commitment is approximately 52 hours. One public hearing is proposed to be held in the middle of June, 1999 at Wausau, Wisconsin.

Natural Resources

**(Environmental Protection--General,
Chs. NR 100--)**

**(Environmental Protection--WPDES,
Chs. NR 200--)**

Subject:

SS. NR 149.22 and 219.05 -- Relating to preliminary notification of revisions to the "State of Wisconsin Aquatic Life Toxicity Testing Methods Manual, Edition 1", cited in ss. NR 149.22 and 219.05.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The "State of Wisconsin Aquatic Life Toxicity Testing Methods Manual, Edition 1" (Methods Manual) was created and revisions made to ss. NR 149.22 and 219.05 to incorporate the Methods Manual by reference were completed in December 1996. The Methods Manual contains requirements that labs and permittees must follow in order for a whole effluent toxicity (WET) test to be acceptable for WPDES permit compliance or to maintain laboratory certification. WET tests are used to estimate the impacts of an effluent on the organisms present in the receiving water it is discharged into. Only by including species which represent each trophic level can a WET test fully protect receiving water populations from effluent toxicity. Federal WET guidance recommends a minimum of three species, representing three

different phyla (e.g., fish, invertebrate, plant) be used to test an effluent for toxicity. Since the Department had experience using a fish and invertebrate species at the time of the initial development of the Methods Manual, the WET Team and stakeholders involved in its development decided it was necessary to postpone the inclusion of a plant species in the Methods Manual until further study could be done.

The decision has been made that scientifically sound algal test methods are now available and may be appropriate for use in compliance tests. Therefore, it is recommended that the Bureau of Watershed Management develop a second edition of the Methods Manual which includes these plant toxicity test methods and make appropriate revisions to chs. NR 149 and 219, Wis. Adm. Code, to incorporate this new edition. Customers will be involved throughout the process by soliciting input to draft documents and by holding a series of meetings where interested parties can come and discuss their needs, concerns, and positions. After this customer interaction, the new toxicity test methods should be sent out for scientific review from laboratories, other state agencies, scientists, academia, and the USEPA, in order to insure that quality science is being recommended. After thorough review from customer groups and the scientific community, and appropriate public hearings, the Bureau of Watershed Management would revise the Methods Manual referenced in ss. NR 149.22 and 219.05, Wis. Adm. Code.

Due to recent developments at the national level (i.e., a lawsuit settlement by the USEPA), ongoing research that the DNR is performing in cooperation with the State Lab of Hygiene (SLH) regarding receiving water control problems in WET tests, and the need for other improvements to Edition 1 of the Methods Manual, the timeline for this project has been extended and other important steps have been added.

Explain the facts that necessitate the proposed change:

The need for a plant test as part of the WET test battery was determined early in the original development of the Methods Manual. Since the development of new plant test methods was thought to have the potential to add months to the development of the first edition, the WET Team decided to put off plant toxicity test method development until after the first edition was complete. Changes are being proposed now as better algal methods are available and due to experience which has been gained with the existing Methods Manual.

Statutory authority:

The authorizing statutes are ss. 281.15 (formerly s. 144.025 (2) (b)) and 227.11 (2). The interpreted statutes are ss. 281.11 (formerly 144.025 (1)) and 283.13 (formerly s. 147.04 (5)).

Anticipated time commitment:

The anticipated time commitment is 1,020 hours. One or two public hearings are proposed to be held (as needed) during May to June of 2000 at Stevens Point and Madison (if needed).

Natural Resources

**(Environmental Protection—WPDES,
Chs. NR 200—)**

**(Environmental Protection—Water
Regulation, Chs. NR 300—)**

**(Environmental Protection—Air Pollution
Control, Chs. NR 400—)**

Subject:

Chs. NR 216, 300 and 406 – Relating to the permit guarantee program for permit application fees required under s. 299.05, Stats.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

Section 299.05, Stats., directs the Department to develop rules to refund license or approval fees if it fails to make a determination on an application within specified time limits. The rule package

initiated here will specify the conditions under which fees will be refunded for :

1) Air pollution construction permit applications. The Bureau of Air Management is proposing to amend ch. NR 406, Wis. Adm. Code.

2) Fees collected for Waterway and Wetland Permit Decisions pursuant to ss. 30.10 to 30.27, Stats. The Bureau of Fisheries Management & Habitat Protection is proposing to amend ch. NR 300, Wis. Adm. Code.

3) Storm water construction site permit application fees as authorized by s. 283.33, Stats. The Bureau of Watershed Management is proposing to amend ch. NR 216, Wis. Adm. Code.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

There is no provision currently in place to refund license or approval fees in these programs. The time frames for Department action will be clarified to indicate when refunds will be made.

The rule has no association with pollution prevention or waste minimization.

Statutory authority:

Section 299.05, Stats.

Anticipated time commitment:

The anticipated time commitment is 280 hours. Two public hearings will be held in August, 1999 at Madison and Wausau.

Natural Resources

**(Environmental Protection—WPDES,
Chs. NR 200—)**

**(Environmental Protection—Solid Waste
Management, Chs. NR 500—)**

**(Environmental Protection—Investigation
and Remediation, Chs. NR 700—)**

Subject:

Chs. NR 204, 214, 518, 538 and 720— Relating to authorization for rule development on solid waste compost quality standards.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

Primary issues include: testing requirements and acceptable contaminant levels, both for composts and ingredients used to produce composts. A variety of related Wisconsin rules are likely to be considered, including: chs. NR 518, 538, 720, 204, and 214, Wis. Adm. Code, and Department of Agriculture, Trade and Consumer Protection (DATCP) rules. Rules from other states and countries may be considered. Certification, labeling, use, recordkeeping, and fees may be addressed. Groups likely to be interested include: the waste industry, waste generators, the agricultural and horticultural industries, home gardeners, DATCP, local governments, citizen environmental protection organizations, and soil scientists.

This action represents a change from past policy.

Explain the facts that necessitate the proposed change:

The Department does not currently have codified solid waste compost quality standards. Certain waste types, and compost produced from them, are exempt by rule from all or portions of requirements normally applicable to solid waste landspreading. Compost use proposals involving nonexempt waste types are reviewed on a case-by-case basis and quality standards are specified in approvals (or exemptions). Compost quality standards are needed to: encourage the recycling of wastes into compost products, protect public health and the environment with respect to this waste recycling, ensure consistent implementation of the law, and reduce Department plan review workload related to the use of solid waste composts.

This rule/Board action represents an opportunity for pollution prevention and/or waste minimization.

Statutory authority:

Chapter 289, Stats.

Anticipated time commitment:

The anticipated time commitment is 656 hours. Three public hearings are proposed to be held in July and August of 2000 at Madison, Green Bay and Eau Claire.

Nursing, Board of**Subject:**

N Code – Relating to current licensure of endorsement candidates and to delegation of orders.

Description of policy issues:*Objective of the rule:*

1) Create a rule clarifying the requirement of holding a current nursing license for endorsement.

2) Amend the rules to include RN's and LPN's as being able to accept orders from optometrists.

Policy analysis:

1) To clarify the issue that an applicant for endorsement must be currently licensed in the state or Canadian province from which they are being endorsed, not that they must merely have held a license at some point in time.

2) To amend the rules to provide that RN's and LPN's may now accept orders from optometrists.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

100 hours.

Pharmacy Examining Board**Subject:**

Phar Code – Relating to the transfer of prescription orders for noncontrolled substances.

Description of policy issues:*Objective of the rule:*

To permit an unlimited number of transfers between pharmacies. The modification would apply only to the transfer of prescription orders for noncontrolled substances. Federal law prohibits more than a one-time transfer of prescription orders for controlled substances.

Policy analysis:

The current "one-time transfer" rule creates undue inconvenience and expense for the consumer. There does not appear to be any adequate reason to prohibit the prescription order from "following" the consumer. The Board believes the current rule is unduly burdensome and restrictive in light of today's mobile society. As long as appropriate procedures set forth in the rule are followed between the pharmacies, permitting unlimited transfers of prescription orders is consistent with the health, safety and welfare of consumers.

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 450.02 (3) (a) and (e), Stats.

Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:

60 hours.

Public Service Commission**Subject:**

Ch. PSC 4 – Relating to environmental analysis.

Description of policy issues:*Subject:*

The proposed rule revision would redefine the list of Commission actions to reflect the level of environmental review required for compliance with the Wisconsin Environmental Policy Act (WEPA), s. 1.11, Stats. The revision would also establish new procedures for preparation of an environmental assessment (EA) and an environmental impact statement (EIS).

Description of objective and policy issues:

Since the last revision of ch. PSC 4, Wis. Adm. Code, in 1995, the Commission has reviewed many proposed generation projects covering a broad range of power supply technologies. This experience has given the Commission a better perspective on the potential for significant environmental impact caused by these types of projects. A revision of the categories of actions, described in s. PSC 4.10 (1) and (2), Wis. Adm. Code, would enable the Commission to meet its requirements related to WEPA more efficiently.

In addition, 1997 Wis. Act 204 (Act 204), passed in April 1998, necessitates a reconsideration of ch. PSC 4, Wis. Adm. Code. Act 204 increased the size threshold above which proposed generation plants and transmission lines would require the issuance of a Certificate of Public Convenience and Necessity (CPCN) by the Commission. It also established a 180-day timeline for the review of proposed projects. The current procedures for the preparation of an EIS, as described in s. PSC 4.30, Wis. Adm. Code, do not allow the Commission to meet this timeline.

The proposed rule revision would redefine the list of Type I actions (for which an EIS is required) and Type II actions (for which an EA is required and an EIS is discretionary) based on the potential for significant harm to the human environment. It is the Commission's view that the current categorization of generation projects does not adequately reflect this potential.

A revision of the current rule would enable the Commission to establish procedures for the preparation of an environmental impact statement that would allow the Commission to comply with WEPA in a more timely and efficient manner.

Groups likely to be affected by the rule revisions include: public utilities, independent power producers, government agencies, intervenors, and citizens.

Statutory authority:

Sections 196.02 (3) and 227.11, Stats.

Estimate of time and resources needed to develop the rules:

The Commission estimates that approximately 200 hours of employee time will be required to revise ch. PSC 4, Wis. Adm. Code. No additional resources are likely to be needed in order to complete this project.

Transportation**Subject:**

Ch. Trans 134 – Relating to establishing procedures for administering 1997 Wis. Act 255, designating authorized special groups and issuing special license plates to authorized groups.

Description of policy issues:*Description of the objective of the rule:*

This rule-making will create ch. Trans 134 which establishes procedures for administering 1997 Wis. Act 255, designating authorized special groups and issuing special license plates to authorized groups.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

This rule-making will establish policies and procedures for designating special groups eligible for distinctive license plates and procedures for plate issuance. These policies and procedures will be new, but the Department will be guided by current special plate issuance policies and procedures so that it can be as consistent as possible in this new program.

Statutory authority for the rule:

Section 341.14 (6r) (fm) 6., Stats.

**Estimates of the amount of time that state employes will
spend developing the rule and of other resources necessary to
develop the rule:**

40 hours.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Administration

Rule Submittal Date

On March 29, 1999, the Wisconsin Department of Administration submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 227.46 (3), 227.47 (1), 562.02 (1), 563.04 (2) and 563.05 (4), Stats.

Statutes interpreted:

SS. 227.42 (1), 227.43 to 227.46, 562.02 (2) (f), 562.04 (1) (b) 6., 562.05 (8) (a), 563.04 (2), 563.05 (4), 563.17 and 563.95, Stats.

Summary:

The proposed rule affects ch. WGC 3, relating to procedures to be used in contested case hearings arising from the regulatory oversight functions of the Division of Gaming, specifically regulation of pari-mutuel wagering as set out in ch. 562, Stats., regulation of charitable gaming as set out in ch. 563, Stats., and certification of Tribal gaming vendors as provided in the Tribal-State gaming compacts.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Division of Gaming is primarily responsible for the promulgation of this rule.

Contact Information

If you have any questions regarding this rule, please contact:

Donna Sorenson
Department of Administration
Telephone (608) 266-2887

Commerce

Rule Submittal Date

On March 31, 1999, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. Comm 11, 12, 13 and 43, relating to gas systems and anhydrous ammonia.

Agency Procedure for Promulgation

A public hearing is required, and will be scheduled. The agency unit primarily responsible for the promulgation of the proposed rule is the Safety and Buildings Division.

Contact Information

If you have any questions regarding this rule, please contact:

Ronald Acker
Department of Commerce
Telephone (608) 267-7907

Commerce

Rule Submittal Date

On March 31, 1999, the Wisconsin Department of Commerce submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects chs. Comm 41 and 42, relating to boilers and pressure vessels.

Agency Procedure for Promulgation

A public hearing is required, and will be scheduled. The agency unit primarily responsible for the promulgation of the proposed rule is the Safety and Buildings Division.

Contact Information

If you have any questions regarding this rule, please contact:

Ronald Acker
Department of Commerce
Telephone (608) 267-7907

Financial Institutions--Banking

Rule Submittal Date

On March 18, 1999, the Department of Financial Institutions submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 220.02 (2) and 227.11 (2), Stats.

Summary:

The proposed rule repeals ch. DFI-Bkg 4, relating to deposits in other financial institutions.

Ch. DFI-Bkg 4 limits the amount state-chartered banks may invest in time deposits and certificates of deposit of other financial institutions. In each domestic insured United States bank and insured savings & loan or credit union, the amount is limited to 20% of capital and surplus. In domestic insured financial institutions, the amount is limited to 50% of capital and surplus. In each uninsured bank or foreign bank, and in any other savings & loan or credit union, the amount is limited to 20% of capital and surplus. 1995 Wis. Act 336 was enacted May 2, 1996 and became effective July 1, 1996. This act repealed and recreated ch. 221, Stats. This represents

a total modernization and streamlining of Wisconsin's banking statutes. 1995 Wis. Act 336 incorporated the provisions of ch. DFI—Bkg 4 into recreated ch. 221, Stats., under s. 221.0320 (6), Stats.

Agency Procedure for Promulgation

A public hearing is not required, pursuant to s. 227.16 (2) (b), Stats. The organizational unit with the Department of Financial Institutions that is primarily responsible for the promulgation of these rules is the Division of Banking.

Contact Information

Agency person to be contacted for substantive questions and responsible for agency's internal processing:

Michael J. Mach, Administrator
Division of Banking
Telephone (608) 266–0451

Financial Institutions--Banking

Rule Submittal Date

On March 18, 1999, the Department of Financial Institutions submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 220.02 (2) and 227.11 (2), Stats.

Summary:

The proposed rule repeals ch. DFI—Bkg 6, relating to investment in bonds issued by international bank for reconstruction and development, the inter–American development bank, and foreign governments.

Ch. DFI—Bkg 6 limits the aggregate amount a state bank, trust company bank or mutual savings bank may invest in bonds or any other security issued by the international bank for reconstruction and development or the inter–American development bank to 10% of its capital and surplus of such bank. Ch. DFI—Bkg 6 limits the aggregate amount a state bank, trust company bank or mutual savings bank may invest in general obligation bonds issued by any foreign national government provided such bonds are payable in American funds to 3% of the capital and surplus of such bank. Ch. DFI—Bkg 6 does not apply to bonds and securities of the Canadian government and Canadian provinces, which are payable in American funds. 1995 Wis. Act 336 was enacted May 2, 1996 and became effective July 1, 1996. This act repealed and recreated ch. 221, Stats. This represents a total modernization and streamlining of Wisconsin's banking statutes. 1995 Wis. Act 336 incorporated the provisions of ch. DFI—Bkg 6 into recreated ch. 221, Stats., under s. 221.0320 (4) and (5), Stats.

Agency Procedure for Promulgation

A public hearing is not required, pursuant to s. 227.16 (2) (b), Stats. The organizational unit with the Department of Financial Institutions that is primarily responsible for the promulgation of these rules is the Division of Banking.

Contact Information

Agency person to be contacted for substantive questions and responsible for agency's internal processing:

Michael J. Mach, Administrator
Division of Banking
Telephone (608) 266–0451

Financial Institutions--Banking

Rule Submittal Date

On March 18, 1999, the Department of Financial Institutions submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 220.02 (2) and 227.11 (2), Stats.

Summary:

The proposed rule repeals ch. DFI—Bkg 7, relating to real estate mortgage loans.

Ch. DFI—Bkg 7 provides a definition for real estate mortgage loans and also establishes the documentation that a state–chartered bank must obtain for each real estate mortgage loan that it makes. It is the intention to repeal ch. DFI—Bkg 7 in its entirety. State–chartered banks compete with other financial institutions and non–financial institution lenders for real estate mortgage loans. The Office of Comptroller of the Currency (“OCC”) regulates national banks. The OCC has no regulations regarding the required documentation of real estate mortgage loans. Likewise, no regulator establishes documentation requirements for non–financial institution lenders. In addition to real estate mortgage loans, state–chartered banks make commercial loans, installment loans, agricultural loans, and other types of loans. There are no regulations establishing documentation requirements for these other categories of loans. A one–size–fits–all approach to the documentation of real estate mortgage loans does not recognize the variety of real estate mortgage loan products available in the market, and does not allow state–chartered banks to compete on a level playing field with other lenders. Examiners of the Division of Banking will review that proper documentation is maintained for real estate mortgages loans, in accordance with the principles of safety and soundness, in the same manner that they do for other categories of loans.

Agency Procedure for Promulgation

A public hearing is required and will be scheduled. The organizational unit with the Department of Financial Institutions that is primarily responsible for the promulgation of these rules is the Division of Banking.

Contact Information

Agency person to be contacted for substantive questions and responsible for agency's internal processing:

Michael J. Mach, Administrator
Division of Banking
Telephone (608) 266–0451

Health and Family Services

Rule Submittal Date

On March 17, 1999, the Wisconsin Department of Health and Family Services submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority:

SS. 252.02 (4), 252.06 (1), 252.10 (6) (f), 252.11 (1) and (1m), 254.51 (3) and 990.01 (5g), Stats.

The proposed rule affects ch. HFS 145, relating to control of communicable diseases.

Reason for rules, intended effects, requirements:

This order updates the Department's rules relating to control of communicable diseases. The order —

—Adds several diseases and conditions to the list of reportable communicable diseases in Appendix A of ch. HFS 145, and deletes a few diseases from that list;

—Adds a general statement of the Department's and local health departments' authority to take necessary measures to prevent, suppress and control communicable diseases;

—Adds several definitions to the rules, including definitions for “case–finding prevention program” and “suspected tuberculosis”;

—Makes updating changes affecting reporting procedures, the edition and title of the standard handbook on methods of control of communicable diseases, special disease control measures, rules relating to control measures with TB, especially concerning restrictions on and management of patients and contacts, and rules relating to dealing with sexually–transmitted diseases; and

—Expands the section on public health dispensaries (county–operated clinics established to diagnose and treat persons who have TB or are suspected of having TB) to provide for reimbursement by the Department at Medical Assistance rates for services provided to persons who are not Medical Assistance clients [current rates specified in s. 252.10, Stats., have not been increased since at least 1977; the Department’s authority to raise the rates by rule was added effective January 1, 1994] and for Department approval of TB case–finding prevention programs.

Pursuant to s. 227.21 (2), Stats., the Department will soon ask for the consent of the Revisor of Statutes and Attorney General to incorporate in the rules, by reference, several sets of standards of national technical organizations. The standards are already referenced in the proposed rules.

Agency Procedure for Promulgation

Public hearings under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats. The public hearings are scheduled for: April 29, 1999 at Green Bay;

May 4, 1999 at West Baraboo; May 5, 1999 at Oconomowoc; May 18, 1999 at Eau Claire; and May 19, 1999 at Minocqua.

Contact Information

Jerry Young
Division of Public Health
Telephone (608) 266–5819

Transportation

Rule Submittal Date

On March 29, 1999, the Wisconsin Department of Transportation submitted a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. Trans 2, relating to the elderly and disabled transportation capital assistance program.

Agency Procedure for Promulgation

A public hearing is required, and hearings are scheduled for May 12 and 13, 1999. The organizational unit responsible for the promulgation of the proposed rule is the Division of Transportation Investment Management, Bureau of Transit and Local Roads.

Contact Information

Julie A. Johnson, Paralegal
Department of Transportation
Telephone (608) 266–8810

NOTICE SECTION

Notice of Hearings

Commerce
(Liquefied Petroleum Gases, Ch. Comm 11)
(Liquefied Natural Gases, Ch. Comm 12)
(Compressed Natural Gas, Ch. Comm 13)
(Anhydrous Ammonia, Ch. Comm 43)

Notice is hereby given that pursuant to ss. 101.02 (15)(h) to (j) and 101.16, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to gas systems and anhydrous ammonia.

April 27, 1999 Tuesday 1:00 p.m.	Conference Room 3B WHEDA Building 201 W. Washington Ave. Madison
May 6, 1999 Thursday 1:00 p.m.	Room E102 Northcentral Tech. College 1000 W. Campus Drive Wausau

Analysis of Proposed Rules

- Statutory authority: ss. 101.02 (15)(h) to (j), and 101.16
Statutes interpreted: ss. 101.02 (15)(h) to (j), and 101.16
- The Division of Safety and Buildings within the Department of Commerce is responsible for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Chapters Comm 11, 12, 13 and 43 contain minimum safety standards for the design, construction, installation, operation, inspection, repair and maintenance of liquefied petroleum gas systems, compressed natural gas systems, liquefied natural gas systems, anhydrous ammonia systems.
- The proposed rules consist of an update of chapters Comm 11, 12 and 13, and consolidating those 3 chapters into a new chapter Comm 40 entitled Gas Systems. In combining the 3 chapters, the rules have been made more uniform for all 3 gas systems. The proposed rules also contain 2 changes in the current rules for anhydrous ammonia systems. The following listing is a summary of the major changes in the proposed rules.
1. Deleting the requirements to submit a copy of the agreement and training program when plans are submitted for service stations involving the use of key, card or code dispensing units. [Comm 40.10 (2) (f)]
 2. Adding a new requirement to liquefied petroleum gas systems and liquefied natural gas systems for submittal of plans when system revisions or modifications are made. [Comm 40.11]
 3. Clarifying the rules for inspection of the gas system installations. [Comm 40.14 (2)]
 4. Updating the national standards that are adopted by reference. [Comm 40.30]
 5. Exempting liquefied petroleum gas facilities that are covered under chapter PSC 135. [Comm 40.40 (2) (b)]
 6. Requiring department approval for liquefied petroleum gas installations where the aggregate water capacity of the installation will be 4000 gallons or larger, regardless of individual container sizes. [Comm 40.42]
 7. Deleting the amendment to the NFPA 58 standard that allowed reduced setbacks for liquefied petroleum gas containers. [Comm 40.45]
 8. Adding a new requirement to liquefied natural gas systems for completion of a certificate of installation form and submittal of a copy of the form to the local fire department. [Comm 40.52]

9. Requiring a breakaway device to be installed on all new and existing anhydrous ammonia installations. [Comm 43.26 (8)]
The proposed rules have been developed with the assistance of the Gas Systems Code Advisory Council. The members of that citizen advisory council are as follows:

Name – Representing

Ed Aldridge – Growmark, Inc.
Bruce Barganz – Wisconsin Fertilizer & Chemical Association
Tim Clay – Wisconsin Federation of Cooperatives
David A. Duey – ANGI International
Kingsley H. Forbes – National Propane Gas Association
Donald Healy – Wisconsin Agri-Service Association
Art Herschberger – Wisconsin Propane Gas Association
Bruce Kleespie – Kleespie Tank & Petroleum Equipment
Gary Puljas – Wisconsin Fire Inspectors Association
Gene Reece – Wisconsin State Fire Chiefs Association
John Wehmeier – Wisconsin Utilities Association

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **May 21, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Environmental Assessment

Notice is hereby given that the Department has prepared a preliminary Environmental Assessment (EA) on the proposed rules. The preliminary recommendation is a finding of no significant impact. Copies of the preliminary EA are available from the Department on request and will be available at the public hearings. Requests for the EA and comments on the EA should be directed to:

Robert Langstroth
Division of Safety & Buildings
Department of Commerce
P.O. Box 2599
Madison, WI 53701
Phone (608) 264-8801
or TTY (608) 264-8777

Written comments will be accepted until **May 14, 1999**.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing the current rules for gas systems and anhydrous ammonia. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing those rules. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Local municipalities may voluntarily enforce the rules for gas systems and anhydrous ammonia, and they have the authority to offset any costs by charging appropriate fees.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rules will affect any business involved with the design, construction, installation, operation, inspection, repair or maintenance of liquefied petroleum gas systems, liquefied natural gas systems, compressed natural gas systems or anhydrous ammonia systems.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The rules include a new requirement for owners of liquefied petroleum gas systems and liquefied natural gas systems to submit plans when system revisions or modifications are made.

The rules require gas system installers to notify a Department inspector at least 5 business days prior to the start of system construction in order to arrange for an inspection.

The rules include a new requirement for liquefied natural gas system installers to complete a certificate of installation form and submit a copy of the form to the local fire department.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

Notice of Hearings
Commerce

(Fire Prevention, Ch. Comm 14)
► (Reprinted from March 31, 1999 Wis. Adm. Register.)

Notice is hereby given that pursuant to ss. 101.14, 101.573 and 101.575, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to fire department dues entitlement.

Hearing Information

May 3, 1999 Monday 10:00 a.m.	Conference Room 3B WHEDA Building 201 W. Washington Ave. Madison
May 5, 1999 Wednesday 10:30 a.m.	Room 152A State Office Bldg. 200 N. Jefferson St. Green Bay
May 12, 1999 Wednesday 11:00 a.m.	Room 247-249 Indianhead Tech. College 1900 College Drive Rice Lake

Analysis

Statutory authority: ss. 101.14, 101.573 and 101.575

Statutes interpreted: ss. 101.14, 101.573 and 101.575

Chapter Comm 14 contains minimum safety standards for the prevention of fire in order to protect the health, safety and welfare of the public and employees in public buildings and at places of employment. In addition to specifying minimum safety standards, chapter Comm 14 requires fire prevention inspections to be conducted in public buildings and at places of employment. The inspections must be conducted twice per year except for specified occupancies that are allowed to be inspected once per year. These inspections must be conducted by the responsible fire department in order for the municipality to be entitled to receive a fire department dues payment from the state fire fund.

The proposed rules consist of revisions and additions in chapter Comm 14 relating to the fire prevention inspections and the entitlement to the fire fund dues payment. The proposed rules contain additional exceptions for specific occupancies that may be inspected once rather than twice per year. These occupancies include vacant buildings, confined spaces, certain residential buildings, and specified fully-sprinklered buildings.

The proposed rules contain a new section in chapter Comm 14 in order to codify the process and the requirements for entitlement to receive a payment from the fire dues fund as specified in section 101.575, Stats. The new requirements cover eligibility to receive the payment, determination of compliance, the self-certification audit process, the onsite audit process, and the registration of fire departments.

The proposed rules were developed with the assistance of the Fire Department Dues Entitlement Task Group. The members of that advisory group are as follows:

Name – Representing

David L. Berenz – Wisconsin State AFL–CIO
Larry Burton – Wisconsin Insurance Alliance
John Fulcher – Wisconsin State Fire Chiefs Association
Lee Jensen – City of Milwaukee
Keith Kesler – Brule Fire Department
Ed Ruckriegel – Madison Fire Department
Fred Schultz – Wisconsin Fire Inspectors Association
Robert W. Stedman – Fire & EMS Legislative Leadership Coalition

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **May 26, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266–8741 or TTY at (608) 264–8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266–8741 or (608) 264–8777 (TTY). Copies will also be available at the public hearings.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rules will affect any fire department involved with providing fire protection or fire prevention services for a municipality. Under the rules, a fire department may be a public or private fire company or fire corporation.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The rules retain the current requirements for fire prevention inspection reports and fire incident reports. The rules include a new requirement for submittal of a fire department annual update form. The rules also codify the current process requirements for submittal of a self–certification audit form and for fire department initial registration.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing chapter Comm 14. The proposed rules do not contain any changes in the Division's fees charged for administering and enforcing chapter Comm 14. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Local municipalities also enforce chapter Comm 14, and the proposed rules will not create any additional workload costs for municipalities.

Notice of Hearings

Commerce

*(Boiler & Pressure Vessels,
Chs. Comm 41–42)*

Notice is hereby given that pursuant to ss. 101.02 (15)(h) to (j) and 101.17, Stats., the Department of Commerce announces that it will hold public hearings on proposed rules relating to boilers and pressure vessels.

Hearing Information

April 27, 1999 Tuesday 10:00 a.m.	Conference Room 3B WHEDA Building 201 W. Washington Ave. Madison
May 6, 1999 Thursday 10:00	Room E102 Northcentral Tech. College 1000 W. Campus Drive Wausau
May 7, 1999 Friday 10:00 a.m.	Room 120 Waukesha State Office Bldg. 141 N.W. Barstow Street Waukesha

Analysis of Proposed Rules

Statutory authority: ss. 101.02 (15)(h) to (j), and 101.17

Statutes interpreted: ss. 101.02 (15)(h) to (j), and 101.17

The Division of Safety and Buildings within the Department of Commerce is responsible for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Chapters ILHR 41–42 contain minimum safety standards for the design, construction, installation, operation, inspection, testing, maintenance, repair and alteration of boilers and pressure vessels installed in public buildings and at places of employment.

The proposed rules consist of an update of chapters ILHR 41–42 in order to bring the state boiler and pressure vessel code up to date with current technology and nationally recognized standards. The following is a summary of the major changes being proposed in chapters ILHR 41–42.

1. Updating currently adopted standards and adding the adoption by reference of 2 new standards. The ASME Boiler and Pressure Vessel Code, the Power Piping Code (ANSI/ASME B31.1), and the Pressure Vessel Inspection Code (API 510) are being updated to the current editions. The Pressure Vessels for Human Occupancy standard (ANSI/ASME PVHO–1) and the National Board Inspection Code (ANSI/NB–23) are being added as adopted standards. [ILHR 41.10]
2. Adding a new requirement for certified inspectors to report to the department when inspection service is started or discontinued on a boiler or pressure vessel. [ILHR 41.15 (3)]
3. Adding a new requirement for obtaining concurrence of the certified inspector before an owner’s request for an extension between inspections would be granted. [ILHR 41.17 (5)]
4. Adding a new requirement for boilers installed prior to 1957 to have at least one pressure control or one temperature control. [ILHR 41.29 (2)(intro.)]
5. Adding a new rule requiring pressure vessels for human occupancy to be constructed and installed in accordance with the ANSI/ASME PVHO–1 standard. [ILHR 41.42 (3)]
6. Revising the rule that currently prohibits the use of slip-on flanges exceeding 4 inches nominal pipe size on power piping. [ILHR 41.46 (1)]
7. Eliminating most of the chapter ILHR 42 requirements, and requiring repairs and alterations to be completed in accordance with the National Board Inspection Code (ANSI/NB–23). The remaining requirements from chapter ILHR 42 are being moved into subchapters in chapter ILHR 41, and chapter ILHR 42 is being repealed. [Treatment SECTIONS 30 to 33]
8. Phasing out of the repair registration issued by the department. No new state repair registrations will be issued, and current holders of the repair registration may continue to repair boilers and pressure vessels under that registration but may renew that registration only once. Renewal of the registration will be contingent upon passing an audit of the holder’s quality control manual and program. [ILHR 41.61 and Comm 5.30 (4)(d)]

The proposed rules have been developed with the assistance of the Boiler and Pressure Vessel Code Advisory Council. The members of that citizen advisory council are as follows:

Name – Representing	Association
William H. Andrae – Boiler and Pressure Vessel Repairer	
Larry Hamm – Wisconsin Association of Power Engineers	
Rick Heeren – Mechanical Contractors Association of Wisconsin	
Daniel Hegyi – American Insurance Association	
Matt Keenan – Wisconsin Boiler Inspectors Association	
Douglas McLeish – Wisconsin Manufacturers and Commerce	
John Nepscha – Wisconsin Utilities Association	

Paul E. Prill – Wisconsin Pipe Trades Association
Randy Pucek – City of Milwaukee

Ernest J. Spring – Wisconsin Department of Administration

Raymond P. Swanson – Uniform Boiler & Pressure Vessel Laws

Society

Interested persons are invited to appear at the hearings and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **May 21, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the proposed rules may be obtained without cost from Roberta Ward, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, Wisconsin 53701, telephone (608) 266-8741 or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

Any business involved with the design, construction, installation, operation, inspection, testing, maintenance, repair or alteration of boilers or pressure vessels will be affected by the rules.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The rules include a new requirement for certified inspectors to report to the department when inspection service is started or discontinued on a boiler or pressure vessel.

3. Types of professional skills necessary for compliance with the rules.

There are no types of professional skills necessary for compliance with the rules.

Fiscal Estimate

The Safety and Buildings Division is responsible for administering and enforcing chapters ILHR 41-42. Also, the proposed rules will not create any additional workload costs. Therefore, the proposed rules will not have any fiscal effect on the Division.

Environmental Analysis

Notice is hereby given that the Department has considered the environmental impact of the proposed rules. In accordance with chapter ILHR 1, the proposed rules are a Type III action. A Type III action normally does not have the potential to cause significant environmental effects and normally does not involve unresolved conflicts in the use of available resources. The Department has reviewed these rules and finds no reason to believe that any unusual conditions exist. At this time, the Department has issued this notice to serve as a finding of no significant impact.

Notice of Hearing

***Financial Institutions
(Division of Banking)***

Notice is hereby given that pursuant to ss. 220.02(2) and 227.11(2), Stats., the Department of Financial Institutions, Division of Banking will hold a public hearing at the Department of Financial Institutions, Tommy G. Thompson Conference Room, 5th Floor, 345 W. Washington Avenue in the city of Madison, Wisconsin, on the **3rd day of May, 1999, at 10:00 a.m.** to consider repealing ch. DFI-Bkg 7 relating to real estate mortgage loans. This hearing is held in an accessible facility.

Analysis Prepared by Department of Financial Institutions, Division of Banking

Analysis: To repeal DFI-Bkg 7. Statutory authority: ss. 220.02(2) and 227.11(2), Stats. Summary: Ch. DFI-Bkg 7 provides a definition for real estate mortgage loans and also establishes the documentation that a state-chartered bank must obtain for each real estate mortgage loan that it makes. It is the intention to repeal Ch. DFI-Bkg 7 in its entirety. State-chartered banks compete with other financial institutions and non-financial institution lenders for real estate mortgage loans. The Office of Comptroller of the Currency ("OCC") regulates national banks. The OCC has no regulations regarding the required documentation of real estate mortgage loans. Likewise, no regulator establishes documentation requirements for non-financial institution lenders. In addition to real estate mortgage loans, state-chartered banks make commercial loans, installment loans, agricultural loans, and other types of loans. There are no regulations establishing documentation requirements for these other categories of loans. A one-size-fits-all approach to the documentation of real estate mortgage loans does not recognize the variety of real estate mortgage loan products available in the market, and does not allow state-chartered banks to compete on a level playing field with other lenders. Examiners of the Division of Banking will review that proper documentation is maintained for real estate mortgages loans, in accordance with the principles of safety and soundness, in the same manner that they do for other categories of loans. Agency person to be contacted for substantive questions and responsible for agency's internal processing: Michael J. Mach, Administrator, Division of Banking, tel. 266-0451.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses.

Fiscal Estimate

There is no state fiscal estimate effect or local government costs. No funding sources or ch. 20 appropriations are affected. There are no long-range fiscal implications.

Contact Person

For questions concerning the proposed rule, or for a copy of the proposed rule and the full fiscal estimate from the agency upon request and at no charge, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, 345 W. Washington Avenue, 4th Floor, Madison, Wisconsin 53703, tel. (608) 266-0451.

Notice of Hearing

Health & Family Services

(Community Services, Chs. HFS 30-)

Notice is hereby given that, pursuant to s. 51.42 (7) (b), Stats., the Department of Health and Family Services will hold a public hearing to consider the creation of ch. HFS 41, Wis. Adm. Code, relating to in-home mental health services for children.

Hearing Information

April 26, 1999
Monday
Room B155
State Office Building
1 West Wilson Street
MADISON, WI
From 10 a.m. to 12 noon
and 1 p.m. to 3 p.m.

The hearing site is fully accessible to people with disabilities. Parking for people with disabilities is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp and in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

These are rules for certification of community mental health programs that provide intensive in-home mental health services for children and their families.

The Department under s. 51.42(7), Stats., certifies community mental health programs if they meet requirements set out in the Department's rules. The significance of certification is that it is a condition for receipt of state community aids funding. That means that it is a condition for county use of state community aid funds to finance a county-operated program or to purchase services from another community mental health program. Certification would also be a condition for claiming reimbursement from the Medical Assistance (MA) program for services provided to MA-eligible persons.

The Department certifies several types of community mental health programs. For each type there is a set of rules that a program must comply with to be certified and to keep its certification. Currently the types of programs are those that provide adult/child inpatient services, adult/child outpatient clinic services, adult day treatment services, child day treatment services or adult/child emergency (crisis) services. This order establishes standards for a new type of community mental health program, namely, a program that provides intensive services to children in their own homes.

Medical Assistance has been paying for in-home mental health services for children, with prior authorization, since 1991, after the federal government made changes in the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). If the EPSDT screening indicated that a child needed mental health services, MA had to pay for those services. They could be provided in the child's home or in a clinic setting. For many children, services provided in the home have proven to be more effective than services provided at a clinic. MA began to pay for in-home services for MA-eligible children who were found to have a "severe emotional disturbance" (SED). Those services were reimbursed as HealthCheck (EPSDT) - other services. Department mental health staff developed guidelines for in-home service providers, which have been used also by the MA program. These rules will replace the guidelines.

The rules cover certification procedures; qualifications of personnel; eligibility for services; intake and assessment; enrollment of a child and family; development of the family services plan; services to be available; limits on service intensity and duration; client service records; client rights and resolution of grievances; and client satisfaction indicators.

Contact Person

To find out more about the hearing or to request a copy of the proposed rules, write or phone:

Eleanor McLean
Bureau of Community Mental Health
P. O. Box 7851
Madison, Wisconsin 53707
608-266-6838 or,
if you are hearing impaired,
608-266-7376

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number shown above. Persons requesting a non-English or sign language interpreter should contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **May 3, 1999** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

These are new rules. They consist of standards for community mental health programs that provide intensive mental health services to children and their families.

The Department is directed by s. 51.42(7)(a)1., Stats., to certify community mental health programs, and currently certifies six types of programs. Programs that provide intensive in-home services for children and their families will be a new type.

The effect of having program certification requirements is to make program certification a condition for county purchase of the services with community aid funds. In addition, compliance with the program certification requirements becomes a condition for Medical Assistance (MA) reimbursement for any MA-covered service. It should be noted that MA coverage is not as broad as the coverage described in these rules.

The rules will not affect the expenditures or revenues of local governments. Local governments are not involved with the certification of community mental health programs and do not administer or contribute to the financing of the Medical Assistance (MA) program.

The rules will bring about a modest increase in the work of the Department's program certification staff, but the associated costs can be absorbed because there will only be about 30 programs, at least to start, and the way the rules are written assumes the in-home service programs are operated by or out of mental health outpatient clinics which program certification staff already certify and therefore visit periodically.

Community mental health in-home services for children who are severely and emotionally disturbed (SED), as defined in s. HSS 107.32(1)(a) 2., are currently reimbursed by MA as mental health outpatient clinic services, with rigorous prior authorization. About 30 programs provide MA-reimbursed in-home services to SED children, with MA paying out about \$1.5 million for those services in 1996. Once the program certification standards are in place, more programs may seek MA provider certification which would increase MA spending for in-home mental health services for SED children. On the other hand, in-home mental health services for children are a less expensive alternative to inpatient services and are increasingly recognized as equally effective or more effective for many children.

Initial Regulatory Flexibility Analysis

These are rules for a new type of certified community mental health program, intensive in-home services for children and their families. About 30 programs operated out of outpatient mental health clinics currently provide in-home services for children and their families. The Medical Assistance (MA) program currently reimburses clinics for in-home mental health services provided to MA-eligible children and their families under Department prior authorization guidelines. Once the rules are in effect, programs will have to comply with the rules as a condition for MA reimbursement for provision of MA-covered services.

Almost one-third of the programs currently providing intensive in-home mental health services for children and their families appear to be small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The rules define what an intensive in-home mental health services program for children and their families is for purposes of county operation or purchase of services and MA reimbursement of providers of services to MA-eligible recipients..

The rules cover the qualifications of professional personnel, which are about the same as the qualifications for professional personnel of other certified community mental health programs included in rules recently amended or under revision; eligibility for services criteria; intake and assessment; development of a family services plan; the services that are to be available; limits on service intensity and duration; client records; and client rights.

Professional skills necessary for compliance with the rules are program administration and the clinical direction and supervision, services facilitation and therapy involved in providing intensive in-home mental health services to eligible children and their families.

Notice of Hearings Health & Family Services (Community Services, Chs. HFS 30-)

Notice is hereby given that, pursuant to s. 46.295 (6), Stats., the Department of Health and Family Services will hold public hearings to consider the repeal and recreation of ch. HFS 77, Wis. Adm. Code, relating to criteria and procedures for reimbursement of interpreting services for persons who are deaf or hard of hearing.

Hearing Information

April 29, 1999
Thursday
From 9 a.m. to 1 p.m.
Room D103
North Central Technical College
1000 W. Campus Drive
WAUSAU, WI

April 30, 1999
Friday
From 9 a.m. to 1 p.m.
Center for the Deaf and Hard
of Hearing
3505 N. 124th Street
BROOKFIELD, WI

May 3, 1999
Monday
From 9 a.m. to 1 p.m.
Room S 214E
State Laboratory of Hygiene
2601 Agriculture Drive
(intersects with Pflaum Rd.
a few blocks east of Hwy. 51)
MADISON, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Department of Health and Family Services

This order updates the Department's rules for operation of a program established under s. 46.295, Stats., that reimburses interpreters for the provision of interpreting services for persons who are deaf or hard of hearing. It is necessary to update the rules because the program has made changes in how interpreters are scheduled and in the method of certifying and verifying interpreters who are not certified by the National Registry of Interpreters for the deaf, and because of changes in the generally accepted preferred terminology for referring to people with hearing loss and to the services required to support communication access.

The current rules state that the Department will schedule interpreting services for an individual or organization authorized to receive interpreting services funded by the Department. However, although the Department continues to fund interpreting services and maintain lists of qualified interpreters, it no longer directly schedules interpreters. Requests for interpreting services are received and reviewed by the Department's 6 region-based Coordinators for Deaf and Hard of Hearing Services to ensure that the circumstances for which services are requested meet the requirements of the program statute and ch. HFS 77. If qualified, the individual or organization requesting the service is provided with a registry of certified and verified interpreters. The individual or organization then schedules the interpreter.

The current rules do not mention the Wisconsin Interpreting and Transliterating Assessment (WITA) as a way to certify and verify the qualifications of sign language interpreters for persons who are deaf or hard of hearing. Yet in May 1996, the Department began using WITA as the primary method of certifying and verifying interpreters to eventually replace the Wisconsin Quality Assurance Program. Interpreters verified through WITA qualify for reimbursement by the Department for interpreting services provided under ch. HFS 77.

The current rules refer throughout to "hearing impaired persons" and "interpreter services," which are terms also used in s. 46.295, Stats., although undefined there. These are replaced in the revised rules with "deaf or hard of hearing persons" and "interpreting services," which are terms preferred by the deaf and hard of hearing communities.

Contact Person

To find out more about the hearings or to request a copy of the proposed rules, write or phone:

Joan Sanzen
Bureau of Sensory Disabilities
P. O. Box 7852
Madison, Wisconsin 53707-7852
608-243-5627 V/TTY;
sanzejo@dwd.state.wi.us

Sign language interpreters and real time captioning will be available at each hearing.

If you are visually impaired or do not speak English and if you, therefore, require a non-English interpreter at a hearing or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number shown above. Persons requesting a non-English interpreter should contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, a non-English interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **May 10, 1999** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

These revised rules will not affect the expenditures or revenues of state government or local governments.

Revisions to the rules are being made to reflect programmatic changes that have been made in the following areas:

1. The process for scheduling interpreters – The Department no longer schedules interpreters. Instead, the Department's 6 region-based Coordinators for Deaf and Hard of Hearing Services provide to persons requesting interpreting services a registry of certified and verified interpreters, and the persons requesting the services then schedule the interpreters.
2. The method of certifying and verifying interpreters – The Wisconsin Interpreting and Transliterating Assessment (WITA) was implemented in May 1996 as a primary method of certifying and verifying interpreters. Interpreters certified through WITA qualify for reimbursement by the Department for services provided under these rules. WITA is not referenced in the current rules.
3. The terminology for referring to people who are deaf or hard of hearing and to the services that support them – The current rules refer to deaf or hard of hearing individuals as “hearing impaired persons.” The preferred terminology is “deaf or hard of hearing persons.” The preferred terminology for the services provided by an interpreter is “interpreting services” rather than “interpreter services” as in the current rules.

These changes are programmatic only and have no fiscal impact on the appropriation for the activities specified in ch. HFS 77.

Initial Regulatory Flexibility Analysis

These are changes to rules that apply to deaf or hard of hearing persons who need interpreting services, sign language and oral interpreters who provide those services and individuals and governmental agencies, courts and private agencies that request interpreting services or information about interpreting services under s. 46.295, Stats.

The Department maintains 2 registries of certified and verified interpreters and reimburses interpreters for services provided

Most of the 300 or so certified sign language and oral interpreters for deaf and hard of hearing persons in Wisconsin operate as small businesses, as “small business” is defined in s. 227.114 (1) (a), Stats.

The principal rule changes – scheduling done by the requesting individual or organization rather than by the Department; use of the Wisconsin Interpreting and Transliterating Assessment (WITA) as the primary means for certifying and verifying interpreters, which will eventually replace the Wisconsin Quality Assurance Program; and replacing two terms used in the rules with terms generally preferred by persons who are deaf or hard of hearing – are already in effect and so will not have any impact on interpreters.

Notice of Hearings

Health & Family Services

(Community Services, Chs. HFS 30–)

Notice is hereby given that, pursuant to ss. 46.973 (2) (c), 51.42 (7) (b) and 51.45 (8) and (9), Stats., the Department of Health and Family Services will hold public hearings to consider the repeal of ss. HFS 61.022 (1), (4) and (6) and 61.06 (14) and subch. III of ch. HFS 61, Wis. Adm. Code, and the creation of ch. HFS 75, Wis. Adm. Code, relating to standards for community substance abuse prevention and treatment services.

Hearing Information

May 5, 1999
Wednesday
From 10 a.m. to 2 p.m.

Room 40
State Office Building
819 N. 6th Street
MILWAUKEE, WI

May 6, 1999
Thursday
From 10 a.m. to 2 p.m.

Room 751
State Office Building
1 W. Wilson Street
MADISON, WI

May 12, 1999
Wednesday
From 1 p.m. to 5 p.m.

Room 152A
State Office Building
200 N. Jefferson Street
GREEN BAY, WI

May 13, 1999
Thursday
From 1 p.m. to 5 p.m.

Auditorium
Chippewa Valley Technical College
620 W. Clairemont Avenue
EAU CLAIRE, WI

The hearing sites are fully accessible to people with disabilities.

Parking for people with disabilities attending the Madison hearing is available in the parking lot behind the building, in the Monona Terrace Convention Center Parking Ramp and in the Doty Street Parking Ramp. People with disabilities may enter the building directly from the parking lot at the west end of the building or from Wilson Street through the side entrance at the east end of the building.

Analysis Prepared by the Department of Health and Family Services

The Department's current rules for certification of community alcohol and drug abuse prevention and treatment programs have not been significantly revised for more than 10 years. This rulemaking order removes the standards from ch. HFS 61, where they have been co-located with standards for community mental health and developmental disabilities service programs, and places them in a new ch. HFS 75 which is specifically for community substance abuse service programs. The order then updates those standards to incorporate current treatment concepts, eliminate rule parts which are no longer relevant for treatment providers, require use of uniform placement criteria and expand standards for treatment of addiction with methadone or another U.S. Food and Drug Administration (FDA)-approved narcotic.

In the revised rules a certified service provider is called a "service" rather than a "program."

The revised rules consist of definitions, the general requirements that apply to all or most of the different types of substance abuse services, and standards for particular services – prevention; emergency outpatient; medically managed inpatient detoxification, medically monitored residential detoxification, ambulatory detoxification, non-medical residential intoxication monitoring, medically managed inpatient treatment, medically monitored inpatient treatment, day treatment, outpatient treatment and narcotic treatment for opiate addiction. A particular provider may be certified to provide one or more types of service.

The revised rules incorporate Wisconsin's new Uniform Placement Criteria (WI-UPC) but permit use, alternatively, of placement criteria developed by the American Society of Addiction Medicine (ASAM) or similar placement criteria the Department may approve. These criteria provide a uniform way of determining an initial recommendation for initial placement, continued stay, level of care transfer and discharge of a substance abuse patient.

Contact Person

To find out more about the hearings or to request a copy of the proposed rules, write or phone:

Vincent Ritacca
Bureau of Substance Abuse Services
P. O. Box 7851

Madison, Wisconsin 53707
608-266-2754 or,
if you are hearing impaired,
608-266-7376

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number shown above. Persons requesting a non-English or sign language interpreter should contact the person at the address or phone number given above at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **May 20, 1999** will be given the same consideration as testimony presented at the hearing.

Fiscal Estimate

This order renumbers and revises the Department's rules for certification of community alcohol and drug abuse prevention and treatment programs. In the revised rules a certified service-providing entity is called a "service" rather than a "program."

The revised rules mainly update existing rules in ch. HFS 61 but also require the use of standard approved placement criteria, add new types of treatment services (programs) and require that each treatment service have a qualified clinical supervisor on staff or available to provide clinical supervision of substance abuse counselors.

1. Patient Placement Criteria

The revised standards will require the use of placement criteria, either Wisconsin Uniform Placement Criteria (WI-UPC), the American Society of Addiction Medicine (ASAM) criteria or other similar criteria approved by the Department.

The overall implementation of this requirement will be cost neutral to state and local government agencies because both providers and service funders are currently using some form of placement recommendation decision-making process. The change in the rules refines the process by adding standardization and makes better use of existing resources by placing an emphasis on the least restrictive service level that can adequately meet the needs of the patient. The application of the criteria follows after application of the already established screening process and requires only about 17 minutes to score the UPC tool. Any additional nominal cost incurred due to the criteria's application process will be more than compensated by the increased focus on the least restrictive level of care.

With ample cost-free training provided to date, training is not expected to be an added expense to the service providers, the funders or the county 51 systems. However, the ASAM criteria are proprietary, and if a funder, provider or county 51 system elects to use ASAM criteria, training costs will be incurred. Likewise, if other criteria approved by DHFS are used, training costs will be established by either the developer of the criteria or independent training entities.

2. Service Levels

The revised standards add several service levels that serve as alternatives to more costly services and, when appropriately used, will not increase costs-per-episode of care.

3. Clinical Supervision

The revised standards include requirements for services to have clinical supervision in place.

There will not be a significant cost to either the department or the counties as a result of the cost for clinical supervision training or testing. Since most of those who are seeking certification are certified counselors already employed with an agency, the cost will not be significant to the agency. Clinical supervision is an important component of the standards and in some services should be cost neutral since it is currently standard practice. In programs currently not providing clinical supervision, there will be a cost increase, but not a significant one.

Initial Regulatory Flexibility Analysis

An estimated 15% of the 819 (March 1998) Department-certified community substance abuse services (programs) are private and for-profit, and most of those 130 or so services are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. Within the community substance abuse prevention and treatment system, they operate mainly outpatient treatment services and day treatment services.

The rulemaking order renumbers and updates existing rules and makes the following major changes in the rules:

- adds a requirement that level of care placement decisions be made using the Department's Uniform Placement Criteria (WI-UPC) or placement criteria developed by the American Society of Addiction Medicine or other similar placement criteria approved by the Department. Providers are already using some form of placement recommendation decisionmaking process. Application of the WI-UPC criteria requires only about 7 minutes to complete;

- adds a requirement for clinical supervision of counselor staff by certified clinical supervisors;

- expands and strengthens service evaluation requirements to make sure there is more attention to identifying patient progress and treatment outcomes;

- adds 2 new service types, transitional residential treatment and medically monitored inpatient treatment; and

- expands standards for what the current rules call methadone treatment programs (that is, programs that use methadone in the treatment of narcotic addiction), with the new material drawn largely from federal regulations in expectation that the federal government will be depending more on the states for regulation.

The rule changes will require services to have staff who are trained in how to apply WI-UPC, ASAM or another Department-approved set of similar placement criteria. The Department has been providing cost-free training in how to apply WI-UPC.

The rule changes will also require clinical supervision of counselor staff by certified clinical supervisors or persons who are in the process of becoming certified, or by a physician, psychologist or certified independent clinical social worker.

Notice of Hearings

Health and Family Services (Health, Chs. HFS 110–)

Notice is hereby given that, pursuant to ss. 252.02 (4), 252.06 (10), 252.10 (6) (f), 252.11 (1) and (1m), 254.51 (3) and 990.01 (5g), Stats., the Department of Health and Family Services will hold public hearings to consider the revision of ch. HFS 145, Wis. Adm. Code, relating to control of communicable diseases.

Hearing Information

The public hearings will be held:

<u>Date & Time</u>	<u>Location</u>
April 29, 1999 Thursday From 12:00 p.m. (noon) to 1:00 p.m. and again beginning at 4:00 p.m.	World Unity Room University Union UW–Green Bay 2420 Nicolet Drive GREEN BAY, WI
May 4, 1999 Tuesday From 12:00 p.m. (noon) to 1:00 p.m. and again beginning at 4:00 p.m.	Conference Center Papa's Place Hwy. 12 and 630 W. Pine Street WEST BARABOO, WI
May 5, 1999 Wednesday From 12:00 p.m. (noon) to 1:00 p.m. and again beginning at 4:00 p.m.	Wisconsin Room Olympia Resort and Conference Center 1350 Royal Mile Road OCONOMOWOC, WI
May 18, 1999 Tuesday From 12:00 p.m. (noon) to 1:00 p.m. and again beginning at 4:00 p.m.	Northwoods Room Holiday Inn Campus 2703 Craig Road EAU CLAIRE, WI
May 19, 1999 Wednesday From 12:00 p.m. (noon) to 1:00 p.m. and again beginning at 4:00 p.m.	Room A The Point Hotel & Conference Center 8269 Hwy. 51 South MINOCQUA, WI

The hearing sites are fully accessible to people with disabilities.

Analysis Prepared by the Dept. of Health & Family Services

This is an updating of the Department's rules for reporting communicable diseases and taking action to control the spread of them.

The rule-making order adds animal bites, an absolute CD4+ T lymphocyte count of less than 200 cells per microliter and/or a percentage of CD4+ T cells of total lymphocytes of less than 14%, babesiosis, cryptocryptosporidiosis, cyclosporiasis, enteric *Escherichia coli* infection, ehrlichiosis, hanta virus infection, hemolytic uremic syndrome, hepatitis E, listeriosis, group A streptococcal and group B streptococcal invasive disease, and *Streptococcus pneumoniae* invasive disease to the list of reportable communicable diseases in Appendix A. The Department is authorized by s. 990.01 (5g), Stats., to add diseases to that list by rule.

Animal bites are added because in the majority of bite incidents the biting animal needs to be, depending on the species, either quarantined or tested for rabies. This is necessary because the decision regarding whether to preventively treat the bite victim against rabies depends on the outcome of the quarantine or testing of the biting animal. Because animal bites are not currently reportable, some physicians are reluctant to report such incidents out of concern for breaching patient confidentiality.

A CD4+ T lymphocyte count is a laboratory value used to monitor immune suppression. For persons with HIV infection, a finding of a CD4+ T lymphocyte absolute count of less than 200 cells per microliter and/or a percentage of CD4+ T cells of total lymphocytes of less than 14% is the most common AIDS-defining condition. Reporting of CD4+ T lymphocyte counts, therefore, is an important way of assuring completeness of AIDS case reporting. The Centers for Disease Control and Prevention (CDC) recommends that states make this condition reportable, and many (27) states have already done this.

The CDC and Council of State and Territorial Epidemiologists (CSTE) have identified Cryptosporidium and *E. coli* 0157:H7 as important emerging pathogens and have made infections caused by these organisms nationally notifiable. Three major outbreaks of cryptosporidiosis, including one in Milwaukee in 1993, have involved public water supplies. Serious outbreaks of *E. coli* 0157:H7, including some deaths, have occurred in the U.S. from a variety of inadequately cooked or non-pasteurized foods. Hemolytic uremic syndrome is a serious complication of an acute gastrointestinal illness, often caused by *E. coli* 0157:H7 or shigella, and is also now nationally notifiable. Improvements in molecular biologic technology now allow diagnoses of enteric infections in humans caused by pathogenic *E. coli* classified in well-defined groups. The groups associated with significant human enteric diseases include: enterohemorrhagic *E. coli* including *E. coli* 0157:H7, enteropathogenic *E. coli*, enterotoxigenic *E. coli* and enteroinvasive *E. coli*.

Cyclosporiasis is a parasitic disease which has been reported with increasing frequency in the United States in the past ten years. In 1996, raspberries imported from Guatemala were associated with over 1400 cases among residents in 20 states and Canada. During 1997, the CDC investigated 18 event-associated clusters involving 789 cases which occurred in ten states (including Wisconsin) and Canada. These outbreaks reinforce the fact that our supply of fresh produce is increasingly international. Identification of local clusters of this emerging pathogen is important for national and international disease control efforts.

Ehrlichiosis and babesiosis are serious tick-borne diseases, only recently recognized to occur in the upper Midwest. Currently, more is becoming known about the ecology, prevalence and distribution of ehrlichiosis. Some early data suggest that concurrent ehrlichiosis and Lyme disease may alter the course and severity of both illnesses. Ehrlichiosis is rather prevalent in Wisconsin. The degree of endemicity of babesiosis is less well defined. Physician awareness of both diseases is relatively low.

Hantavirus can cause serious infections in which shock and bleeding can be significant and multisystem involvement can occur in humans including the hantavirus pulmonary syndrome, first recognized in Southwestern United States in 1993, and hemorrhagic fever with renal syndrome. Because these are viral diseases which can be acquired from animals it is important to undertake control measures following occurrence of human illness.

Hepatitis E is an enterically transmitted virus which causes acute illness. While most endemic in parts of Asia, Africa, and Mexico, cases among United States residents have occurred in travelers to endemic areas. Because of the potential of fecal-oral transmission for at least 2 weeks after illness onset, case investigation is important.

Listeria is the third most common cause of bacterial meningitis in Wisconsin. During 1995, this organism was implicated in a food-borne outbreak that involved Wisconsin and neighboring states, caused eight hospitalizations and was linked to a dairy product. Listeria contamination of commercial food is a common cause of product recalls.

While skin and respiratory tract infections caused by group A streptococci (GAS) are common illnesses, other infections caused by GAS may be severe, potentially fatal invasive infections such as bacteremia, necrotizing fasciitis, and streptococcal toxic shock syndrome. Searching for and appropriately treating carriers in families and other high-risk settings when invasive GAS infections have occurred is an important control measure.

During the 1970's, group B streptococci (GBS) became the leading cause of sepsis and meningitis among newborns throughout the United States, leading to death in approximately 50% of the infants infected. During the 1980's, improved recognition and treatment reduced the case-fatality rate to about 10%. However, an estimated 8,000 cases of serious neonatal infection continued to occur each year in the United States. During the 1990's, the CDC issued guidelines, developed in partnership with organizations of health professionals and community-based groups which recommended antibiotic treatment during delivery for women at risk of transmitting the infection to their newborns. A study by CDC concluded that up to 80% of neonatal GBS infections that occurred in 1995 were potentially preventable. CDC has recommended that GBS prevention activities be integrated into all prenatal care programs and has encouraged evaluation of the barriers that impede the implementation of effective control measures.

Streptococcus pneumoniae (pneumococcus) is the leading cause of ear infections, bloodstream infections, pneumonia and meningitis. While pneumococcal polysaccharide vaccine has been widely available to prevent invasive infections in persons at risk of invasive disease who are 2 years old and older, it is substantially underused. In addition, approximately 30% of infections with *S. pneumoniae* have become resistant to penicillin and an increasing number of strains are resistant to multiple first line antibiotics used to treat these infections. The CDC has recommended increasing vaccination against invasive pneumococcal diseases in adults and others at increased risk.

The Department has decided to delete granuloma inguinale, lymphogranuloma venereum, nongonococcal cervicitis, nongonococcal urethritis and Q fever from Appendix A. None of these diseases are designated by the CDC as notifiable at the national level.

This rule-making order also adds a general statement of powers for communicable disease control. The statement lists the characteristics of a person who has a communicable disease which poses a threat to others and the measures the Department or the local health officer can take to protect the public's health. The Department is authorized under ss. 250.04(1) and 252.02 (4) and (6), Stats., to implement whatever measures are necessary to control communicable diseases, including promulgating rules to control and suppress communicable diseases and to quarantine and provide for the disinfection of persons, localities and things infected or suspected of being infected by communicable disease. Local health officers are authorized under s. 252.03 (1) and (2), Stats., to take all measures necessary to prevent, suppress and control communicable diseases.

This rule-making order expands the section on public health dispensaries established for the diagnosis and treatment of persons with or suspected of having tuberculosis. Once a dispensary is established by a county or counties this expanded section specifies criteria by which the Department will approve the operation of a TB case finding preventive program and which dispensary services the Department will reimburse. Counties and the Department are authorized by s. 252.10 (1), Stats., to establish public health dispensaries and the Department is authorized by s. 252.10 (6) (f), Stats., to approve the organization and methods of operation of a case finding preventive program, and under s. 252.10 (6) (b), Stats., to reimburse the dispensaries, which the rules specify will be at Medical Assistance program rates.

The rule-making order also adds 14 definitions to the rules and makes updating changes affecting reporting procedures, the edition of the standard handbook on methods of control of communicable diseases, special disease control measures, containment of tuberculosis and requirements relating to sexually-transmitted diseases.

Contact Information

To find out more about the hearings or to request a copy of the proposed revised rules, write or phone:

Jerald Young
Bureau of Communicable Diseases
1414 E. Washington Avenue, Room 167
Madison, Wisconsin 53703

For a copy of the rules, phone (608) 267-9003.

If you have questions about the hearings, phone (608) 266-5819.

If you are hearing-impaired and want a copy of the rules or have questions about the hearings, phone 1 (800) 947-3529.

If you are hearing- or visually-impaired, do not speak English, or have other personal circumstances which might make communication at a hearing difficult and if you, therefore, require an interpreter, or a non-English, large-print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **May 21, 1999** will be given the same consideration as testimony presented at a hearing.

Fiscal Estimate

These are updating amendments to the Department's rules for reporting communicable diseases and taking action to control the spread of them.

The rule-making order adds several diseases to the list of reportable communicable diseases in an appendix of the rules, and deletes a few diseases from that list. The Department is authorized by s. 990.01 (5g), Stats., to add diseases to that list by rule. There is no fiscal impact of the rule changes because reporting mechanisms are already in place.

The rule-making order also:

- 1) Adds a general statement concerning the measures the Department or the local health officer can take to protect the public's health when a person is known to have or is suspected of having a communicable disease which poses a threat to others;
- 2) Makes updating changes related to reporting procedures, referenced documents and special disease control measures; and
- 3) Expands the rules relating to public health dispensaries established for the diagnosis and treatment of persons with tuberculosis (TB), by including criteria by which the Department will approve the operation of TB case finding preventive programs, stating that reimbursable dispensary services are the services specified in s. 252.10, Stats., and providing that reimbursement of public health dispensaries for services provided to clients who are not Medical Assistance recipients will be at the Medical Assistance program rate.

The Department is authorized under s. 252.10 (6) (b), Stats., to establish, by rule, reimbursement rates that are greater than the rates specified in that statute. Currently only Milwaukee County operates a public health dispensary for diagnosis and treatment of TB patients, but other counties are likely to establish dispensaries once the reimbursement rate changes to the Medical Assistance program rate.

There will be increased costs to the state associated with the promulgation of s. HFS 145.13, Reimbursement for Dispensary Services. That new section will raise the public health dispensary reimbursement rate for services to persons who are not Medical Assistance recipients from \$6 per service (\$12 when an X-ray is taken) to the Medical Assistance reimbursement rate. The Department in its 1999-2000 Biennial Budget Request requested an increase in appropriation s. 20.435 (4), Stats., to cover the increased expenditures that the rate increase is expected to generate. The net amount of increased expenditures is expected to be \$107,700 GPR (General Purpose Revenue) in FY 00 (Fiscal Year 2000) and \$88,800 GPR in FY 01 (Fiscal Year 2001).

Initial Regulatory Flexibility Analysis

These are changes to rules relating to reporting of specified communicable diseases to the Department and local health departments and to general powers of the Department and local health departments to control these diseases and the methods they are to employ in controlling these diseases. The rule changes will affect mainly the Department and local health officers but also physicians, advanced practice nurse prescribers, laboratories, health care facilities and school and day care center authorities, counties operating public health dispensaries for TB patients, and persons with a newly-reportable disease, with TB or persons who have or are suspected of having a contagious medical condition which poses a threat to other persons.

Some of the physicians and laboratories required under the revised rules to report cases and suspected cases of 12 communicable diseases and conditions being added to the list of reportable communicable diseases are small businesses as "small business" is defined in s. 227.114 (10) (a), Stats. They have been reporting cases and suspected cases of communicable diseases that have been on that list for many years, and the reporting system, including forms, is in place, so this additional reporting should not be burdensome and will not require new professional skills.

Notice of Hearing

Physical Therapists Affiliated Credentialing Board

Notice is hereby given that pursuant to authority vested in the Physical Therapists Affiliated Credentialing Board in ss. 15.085 (5) (b), 227.11 (2) and 448.40, Stats., and interpreting ss. 448.52 (2) and (3) and 448.54, Stats., the Physical Therapists Affiliated Credentialing Board will hold a public hearing at the time and place indicated below to consider an order to repeal ss. PT 1.02 (5), 3.01 (5) and 4.01 (1) (d);

to amend ss. PT 2.01 (8), ch. PT 5 (title), 5.01 (title) and (4); and to create ss. PT 1.02 (6), 2.01 (8) (a), (b) and (c) and 5.02, relating to the definition of physical therapy aide, the tests of English, written English and spoken English, general supervision of physical therapist assistants, and direct supervision of physical therapist aides and physical therapy aides.

Hearing Information

May 4, 1999
Tuesday
9:30 a.m.

1400 E. Washington Ave.
Room 180
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **May 18, 1999** to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.085 (5) (b), 227.11 (2) and 448.40

Statutes interpreted: ss. 448.52 (2) and (3) and 448.54

The Physical Therapists Affiliated Credentialing Board promulgated rules of a housekeeping nature in May of 1998 and inadvertently left out the repeal of s. PT 4.01 (1) (d), which required a photograph to be submitted with applications for a locum tenens license. Photographs are no longer required to be submitted with applications as there are now other means of identification used, such as a driver's license or a picture ID. Also, requiring applicants to submit a photograph creates unnecessary administrative processing for staff.

The Physical Therapists Affiliated Credentialing Board is of the opinion that there needs to be a clarification regarding how many unlicensed persons can be supervised when a physical therapist is directly on-premises and when they are not. The amendment to Chapter PT 5, specifically to the creation of s. PT 5.02, provides what direct supervision by the physical therapist is as it relates to the physical therapist assistant and the physical therapy aide. In newly created s. PT 5.02 (10) it provides that the physical therapist assistants and physical therapy aides practicing under direct supervision may not exceed 5, and the total number of physical therapy aides practicing under direct supervision may not exceed 3.

A recent change in the Physical Therapy National Examination being given on a computerized basis required the board to promulgate rules regarding temporary licenses. In making those amendments in **Clearinghouse Rule 96-052**, which states that a temporary license cannot be renewed, is necessary as it conflicts with s. PT 3.01 (4), which says that a temporary license can be renewed for hardship reasons. Therefore, s. PT 3.01 (5) is repealed.

Rules are amended to require that applicants who have not graduated from a school of physical therapy whose primary language is not English take and pass three language proficiency examinations, which is the requirement the physical therapy schools now use. Therefore, the board amends its rule to conform to a standard requirement. Those examinations are the test of English as a foreign language (TOEFL), the test of written English (TWE), and the test of spoken English (TSE).

Text of Rule

SECTION 1. PT 1.02 (5) is repealed.

SECTION 2. PT 1.02 (6) is created to read:

PT 1.02 (6) "Physical therapy aide" means a person other than a physical therapist or physical therapist assistant who provides physical therapy services under the direct on-premises supervision of a physical therapist.

SECTION 3. PT 2.01 (8) is amended to read:

PT 2.01 (8) (intro.) Any applicant who is a graduate of a school in a program in physical therapy in which English is not the primary language of communication shall take and pass **TOEFL** each of the following in order to qualify for a license:.

SECTION 4. PT 2.01 (8) (a), (b) and (c) are created to read:

PT 2.01 (8) (a) The test of English as a foreign language (TOEFL) as administered by the educational testing service.

(b) The test of written English (TWE) as administered by the educational testing service.

(c) The test of spoken English (TSE) as administered by the educational testing service.

SECTION 5. PT 3.01 (5) is repealed.

SECTION 6. PT 4.01 (1) (d) is repealed.

SECTION 7. Chapter PT 5 (title), 5.01 (title) and (4) are amended to read:

Chapter PT 5
PHYSICAL THERAPIST ASSISTANTS
AND PHYSICAL THERAPY AIDES

PT 5.01 (title) General supervision of physical therapist assistants.

PT 5.01 (4) Limit the number of physical therapist assistants supervised practicing under general supervision to a number appropriate to the setting in which physical therapy is administered, to ensure that all patients under the care of the physical therapist receive services that are consistent with accepted standards of care and consistent with all other requirements under this chapter. No physical therapist may at any time supervise more than 2 physical therapist assistants full-time equivalents at any time practicing under general supervision.

SECTION 8. PT 5.02 is created to read:

PT 5.02 Direct supervision of physical therapist assistants and physical therapy aides. Physical therapist assistants and physical therapy aides may practice physical therapy under the direct on-premises supervision of a physical therapist. In providing direct supervision, the physical therapist shall do all of the following:

- (1) Have primary responsibility for physical therapy care rendered by the physical therapist assistant or physical therapy aide.
- (2) Be available at all times for consultation with the physical therapist assistant or physical therapy aide.
- (3) Observe and monitor those under direct supervision on a daily basis.
- (4) Evaluate the effectiveness of services provided by those under direct supervision on a daily basis by observing and monitoring persons receiving such services.
- (5) Determine the competence of each physical therapist assistant and physical therapy aide based upon his or her education, training and experience.
- (6) Provide interpretation of referrals and initial patient evaluation. The initial evaluation may utilize information that a physical therapist assistant or physical therapy aide has recorded, but must include direct observation and examination of the patient by the physical therapist.
- (7) Delegate only those portions of an examination which are standardized objective measurements or standardized tests and which the physical therapist assistant or physical therapy aide has demonstrated competence to perform.
- (8) Provide interpretation of objective tests, measurements and other data in developing and revising a physical therapy diagnosis, assessment, and treatment plan.
- (9) Delegate appropriate portions of the treatment plan and program to the physical therapist assistant or physical therapy aide consistent with the education, training, and experience of the person supervised.
- (10) Limit the number of physical therapist assistants and physical therapy aides practicing under direct supervision to a number appropriate to the setting in which physical therapy is administered, to ensure that all patients under the care of the physical therapist receive services that are consistent with accepted standards of care and consistent with all other requirements under this chapter. The total number of physical therapist assistants and physical therapy aides practicing under direct supervision may not exceed 5, and the total number of physical therapy aides practicing under direct supervision may not exceed 3.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearings
Transportation

Notice is hereby given that pursuant to ss. 85.16(1), 85.22(3)(h) and 227.11(2), Stats., and interpreting s. 85.22, Stats., the Department of Transportation will hold public hearings at the following locations to consider the amendment of ch. Trans 2, Wisconsin Administrative Code, relating to elderly and disabled transportation capital assistance program.

Hearing Information

May 12, 1999
Wednesday
10:00 a.m.

Hill Farms State
Transportation Bldg.
4802 Sheboygan Ave.
Room 144-B
Madison, WI

May 13, 1999
Thursday
10:00 a.m.

State Patrol District 4
2805 Martin Ave.
Junction of Hwys. 51 & NN
Upper Conference Room
Wausau, WI

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until **May 27, 1999**, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Ron Morse, Department of Transportation, Bureau of Transit and Local Roads, Room 951, P. O. Box 7913, Madison, WI 53707-7913.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building, and at the south side of the State Patrol District 4 office.

NOTE: This hearing is being conducted at 2 locations in order to give the public greater opportunity to present its facts, arguments and opinions. The records from both locations will be combined into a single Hearing Record on which the Department will base its decisions. Individuals need only attend one of the public hearings for their testimony to be fully considered.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 85.22(3)(h) and 227.11(2)

STATUTE INTERPRETED: s. 85.22

General Summary of Proposed Rule. Chapter Trans 2 establishes the Department's administrative interpretation of s. 85.22, Stats., including the administration of assistance under the federal sec. 5310 program (formerly sec. 16), and prescribes administrative policies and procedures for implementing the elderly and disabled transportation capital assistance program authorized under s. 85.22, Stats. The purpose of this rule making is to clarify existing provisions of the rule as well as incorporate changes to reflect current program policy and conditions and improve program administrative procedures.

This proposed rule:

- Simplifies the requirements an applicant must satisfy to qualify for elderly and disabled transportation capital assistance. The proposed rule eliminates an applicant's requirement to give private transportation providers the opportunity to submit proposals to provide service. The proposed rule merely requires applicants to give private transportation providers the opportunity to comment on the applicant's decision to seek capital assistance from the Department.

- Establishes a simplified process for the Department to review challenges to an application for elderly and disabled capital assistance.

- Revises and clarifies criteria, relative weights, and minimum point totals for evaluating applications for elderly and disabled transportation capital assistance.

- Provides the Department with greater discretion to determine the types of vehicles that may be provided under the elderly and disabled capital assistance program.

- Eliminates the option of allowing applicants awarded capital assistance to purchase vehicles. The proposed rule will continue to authorize the Department to procure vehicles on behalf of applicants awarded capital assistance, but will eliminate the option of allowing applicants to purchase vehicles on their own.

- Establishes record and reporting requirements.

- Allows for greater flexibility in membership requirements of transportation coordinating committees.

Fiscal Effect

No fiscal impact is anticipated from the promulgation of this proposed rule.

Initial Regulatory Flexibility Analysis

This proposed rule has no significant impact on small businesses.

Copies of Proposed Rule

Copies of the proposed rule may be obtained upon request, without cost, by writing to Ron Morse, or by calling (608) 266-1650. Hearing-impaired individuals may contact the Department using TDD (608) 266-3351. Alternate formats of the proposed rule will be provided to individuals at their request.

NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade and Consumer Protection (CR 98-81):

Ch. ATP 48 – Relating to drainage districts.

Agriculture, Trade and Consumer Protection (CR 98-117):

Ch. ATP 127 – Relating to home solicitation selling (direct marketing).

Corrections (CR 98-193):

Ch. DOC 349 – Relating to holding in municipal lockup facilities juveniles who are alleged to have committed a juvenile act.

Corrections (CR 99-15):

Ch. DOC 330 – Relating to the pharmacological treatment of serious child sex offenders.

Employee Trust Funds (CR 99-27):

Chs. ETF 10 & 11 – Relating to dividing Wisconsin Retirement System accounts or annuities per a qualified domestic relations order (QDRO).

Insurance, Commissioner of (CR 99-14):

S. Ins 2.80 – Relating to valuation of life insurance policies model regulation.

Natural Resources (CR 98-177):

SS. NR 25.05, 25.07 and 25.08 – Relating to commercial fishing on Lake Michigan and Lake Superior.

Natural Resources (CR 98-178):

S. NR 20.03 (1) (k) 7. – Relating to sport fishing for yellow perch in portions of tributaries to Lake Michigan defined as outlying trout and salmon waters.

Public Defender (CR 99-33):

S. PD 6.04 (5) – Relating to multiple appointments on the same case.

Public Service Commission (CR 98-157):

Ch. PSC 187 – Relating to sewer main extension and cost recovery.

Public Service Commission (CR 98-194):

Ch. PSC 183 – Relating to requirements for joint local water authorities.

Revenue (CR 98-144):

SS. Tax 11.19 and 11.70 – Relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Workforce Development (CR 98-130):

Chs. DWD 43 and HSS 80 to 82 – Relating to child support administrative enforcement.

Workforce Development (CR 98-204):

Chs. DWD 55 and HFS 55 – Relating to criminal record background checks for certified day care operators, employees and contractors of certified day care operators, and nonclient residents at certified day care locations.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266–7275 for updated information on the effective dates for the listed rules.

Barbering and Cosmetology Examining Board
(CR 98–133):

An order affecting chs. BC 1 to 9, relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Effective 06–01–99.

Health and Family Services (CR 98–136):

An order amending ss. HSS 51.01, 51.02, 51.03 and 51.09, relating to the applicability of the Department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Effective 06–01–99.

Health and Family Services (CR 98–155):

An order repealing and recreating ch. HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards, accreditation of training courses that prepare individuals for certification, and approval of training course managers, principal instructors and guest instructors.

Effective 05–01–99.

Health and Family Services (CR 98–160):

An order amending s. HFS 94.24 (2) (d) 1. d. and (e), relating to searches of the persons and of the rooms and personal belongings of patients residing in a secure mental health unit under s. 980.065, Stats., or the maximum security facility at the Mendota Mental Health Institute.

Effective 05–01–99.

Insurance, Commissioner of (CR 98–186):

An order affecting ch. Ins 51, relating to risk-based capital for health insurers.

Effective 06–01–99.

Natural Resources (CR 98–92):

An order affecting ss. NR 10.104, 10.117 and 10.28, relating to Deer Management Units 73C (Iowa and Grant counties) and 75 (Iowa and Lafayette counties).

Effective 07–01–99.

Natural Resources (CR 98–93):

An order creating s. NR 50.23, relating to wildlife abatement and control grants for urban communities.

Effective 06–01–99.

Natural Resources (CR 98–151):

An order creating ch. NR 809, subch. VIII, relating to water system capacity for community and non-transient non-community water systems.

Effective 06–01–99.

Natural Resources (CR 98–176):

An order affecting ch. NR 47, relating to forestry grant programs.

Effective 06–01–99.

Regulation and Licensing (CR 98–124):

An order affecting ss. RL 5.01, 5.02, 5.06, 5.075 and 5.08, relating to charitable organizations.

Effective 06–01–99.

Regulation and Licensing (CR 98–173):

An order creating chs. RL 140 to 142, relating to the registration of music, art and dance therapists.

Effective 05–01–99.

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